



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 1236 OF 2011

**IN THE MATTER OF THE ESTATE OF LOISE NDUTA MUIRURI ALIAS ROSE NDUTA
MUIRURI (DECEASED)**

(CHIEF MAGISTRATE COURT KIAMBU SUCCESSION CAUSE 163 OF 2005)

RULING

PLEADINGS

Loise Nduta Muiruri (deceased) died on 30th January, 2000. The Applicant Josephine Wanjiku Muiruri filed Summons for revocation or annulment of grant under **Section 76(B) & (F) Rule 49 & 73 of Probate & Administration Rules of the Law of Succession Act Cap 160**.

She sought the orders as follows;

1. The certificate of confirmation of grant issued to the Respondent is CM's

Court Kiambu Cause No. 163 of 2005 be revoked or annulled because;

The Respondent obtained the grant fraudulently by concealment and ` misrepresentation of material facts to this cause.

a. The Applicant is a Lawful beneficiary of the late Rose Nduta Muiruri's estate and she was never notified nor informed or her consent sought in this matter.

At the same time another Applicant, Margaret Gathoni Muiruri filed an application dated 20th September, 2012 brought under **Section 76 of Law of Succession Act Cap 160 and Rule 44(1) of Probate & Administration Rules** for annulment and revocation of the confirmed grant of 16th March, 2011 on the grounds;

b. The grant was obtained fraudulently by means of untrue allegations and the Petitioner did not disclose all beneficiaries to the court.

During the hearing of Oral Submissions by Counsel for the relevant parties and the Respondent Jane Wanjiru Muiruri who appeared in person it was brought to this court's attention that there were 2 Applicants for revocation/Annulment of the confirmed grant of 16th March, 2011.

The Court was presented with the following applications for hearing;

a. The Application for revocation/Annulment of grant by Josephine Wanjiku Muiruri on 22nd June,

- 2011 by the daughter to the deceased.
- b. The Application for revocation/Annulment of grant by Margaret Gathoni Muiruri- co wife to the deceased on 20th September 2011.

It was agreed and Court directed that both Applications be heard at the same time.

ORAL SUBMISSIONS

Mr Ndungu Counsel for the Applicant of application of 22nd June, 2011 sought revocation of grant because only the Respondent was heard to the exclusion of other beneficiaries.

The Respondent obtained a hearing date for confirmation of grant and did not serve the Applicant and other beneficiaries. She later obtained the confirmed grant and excluded the Applicant.

As regards the 2nd application by the Co wife of the deceased Margaret Gathoni Muiruri of 27th September, 2012, they were not aware of another Succession Matter/Cause 1018 of 1980 until they were served.

The Respondent, Jane Wanjiru Muiruri appeared in person. She gave oral evidence that her late father Muiruri Githae had six (6) wives. He gave the land in question Kibichoi/Komothai/452 to her mother the deceased herein for her and her children. The letter to this effect was produced as Exhibit I. Later, the land was registered in her eldest son John Mburu Muiruri. When John Mburu Muiruri died the land was registered in the name of his wife Alice Waithira Mburu as shown in Exhibit 2.

In Succession Cause 1018 of 1980 the Court determined that all the children of Late Muiruri Githae inherit from his estate. The children of the deceased Loise Nduta Muiruri, her mother, the deceased herein did not get anything. The property was taken by Margaret Gathoni Muiruri, the Applicant of the 2nd Application of 20th September, 2012.

Mr. Etolo Counsel for the Applicant herein Margaret Gathoni Muiruri did not offer any explanation or evidence.

EVALUATION

After hearing the submissions and reading the pleadings and evaluating the evidence on record this court considers the following view;

- a. Upon perusal of **Succession Cause 163/05** Kiambu CM's Court file;

The Chief's letter of 20th July, 2005 lists the beneficiaries of the late Loise Nduta Muiruri as the 4 children namely;

- i. a) Lucy Njeri Muiruri
 - b) David Mugo Muiruri
 - c) Josephine Wanjiku Muiruri
 - d) Jane Wanjiru Muiruri
 - ii. The children of her son late John Muiruri and his late wife Alice Waithira Mburu (6 children).
- b. The Applicant Josephine Wanjiru Muiruri was one of the daughters of the deceased and she was gazetted in the Kenya Gazette of 2nd November, 2007.
 - c. The court record shows she applied for confirmation of grant on 4th September 2006 and listed all

siblings but the application was not heard and determined.

1. The Court record shows confirmation of grant was on 24th March, 2011 and it outlined the distribution of the deceased's estate as follows;
2. The beneficiaries survivors of the decease as;
3. Description of property

“Komothai/Kibichoi/452 to be shared by

- a. David Mugo Muiruri - 2 acres
- b. Lucy Njeri Muiruri - 2 acres
- c. 3 acres of our late brother John Mburu Muiruri to be shared by his children in equal shares.
- d. The remaining portion to be registered in the names of Jane Wanjiru Muiruri
- e. Mutigairi Share

Posho Mill to be registered in the name of
Coffee Mil Jane Wanjiru Muiruri”

4. The name of Josephine Wanjiku Muiruri apart from being mentioned as beneficiary she was not consulted /informed, no consent was given and she was not allocated any property of the estate of the deceased.

The above information as depicted from the Succession Cause 163/05, shows that the pleadings confirm she is one of the beneficiaries of the deceased Loise Nduta Muiruri as one of her daughters and she would have been included in the confirmation of grant and allotted part of the deceased's estate as per **Section 29 & 71 of the Law of Succession Act Cap 160.**

The Respondent Jane Wanjiru Muiruri gave oral testimony on 27th October, 2014 and she informed the court that Josephine Muiruri was not included in the grant as she was given another piece of land as evidenced by the affidavit she produced as Exhibit 3 to the court. The affidavit produced by the Respondent is sworn by Margaret Gathoni Muiruri, John Mburu Muiruru, Hassan Mburu Muiruri and Lucy Njeri Muiruri

The import of the affidavit is in relation to Plot 478 (Title No. 126/541) estate at Ngundu Farmers Cooperative Society Ltd.

At Paragraph 7 it shows;

“That consequently the names of Josephine W. Muiruri and Hannah Mugoiri Muiruri (deceased) should be removed from the society's records and documents.”

This clearly shows that the family of the deceased co- wife Margaret Gathoni Muiruri swore an affidavit to remove and thereby dispossess Josephine W. Muiruri of any interest in the above plot. The Applicant did not inherit or possess any land as her name was deleted from the records.

1. The letter of administration intestate in **Succession Cause 163/2005** was obtained by all siblings, of the deceased. When it came to the confirmation of grant the Respondent Jane Wanjiru Muiruri herein did not attend to the hearing of the application filed by the Applicant Josephine Wanjiku Muiruri. She prepared her own application for confirmation of grant and did not inform and obtain consent from the Applicant. She obtained the confirmation grant and excluded her from the distribution of the estate. That was obtaining the confirmation of grant fraudulently and concealing material facts.
2. The Respondent alleged that Josephine W. Muiruri obtained the deceased's; their mother's share in property Plot No. 478 (Title No. 126/541) and therefore she was not allocated any share of the

deceased's property. Respondent should have included the said portion of land as part of the deceased's estate and in the administration of the deceased's estate and confirm it as allocated to the Applicant. This way, the Applicant would benefit from the deceased's estate. But as it stands now, unless and until it is confirmed Josephine Muiruri has benefited from the estate of the deceased either under the confirmed grant or the alleged Plot, the confirmed grant herein cannot be valid.

3. The affidavit produced by the Respondent during the oral testimony in court, does not confirm that the Applicant obtained the deceased's interest in the said Plot. Infact it confirms the contrary, there is no evidence on the affidavit to show that Josephine Muiruri was involved in preparation of the affidavit, or she was informed of the contents of the affidavit, or she was aware of the contents of the affidavit or she signed anywhere on the same document that she was now owner of the assigned property.

The upshot of this matter is that Josephine Wanjiru is a child of the deceased and one of the beneficiaries of the deceased's estate. Yet from the confirmed grant of 24th March, 2011, Jane Wanjiru Muiruri excluded her name from the list of beneficiaries. She was not made aware nor she did disclose to the court at the time of confirmation of grant that Josephine was allocated other land, and neither was she consulted, informed of the application for confirmation of grant and her consent obtained.

In the matter of the estate of Joseoh Nganga Gatumo Succession Cause 1045 of 1990 G.B.M Kariuki J held;

“The provisions of the Law of Succession Act require that all beneficiaries must consent to the confirmation of the grant and distribution of the estate. The evidence before the Court shows that the Applicant and other beneficiaries in the estate were neither consulted nor did they give their consents to the confirmation of the grant and distribution of the estate. The manner in which the application for confirmation of grant was made left a lot to be desired. Not only were the deceased's sons and daughters disinherited by dint of the fact that the bulk of the estate was vested absolutely in the name of the Respondent's mother and subsequently in the name of the Respondent himself after substitution, but it was also patent that no reference was made to the deceased's other children and no trust was created for the estate to be held for the benefit of lineal descendants”.

The court has noted in the confirmed grant that Jane Wanjiru Muiruri has allocated the deceased property to other beneficiaries and left out the Applicant and left herself “the rest”- which is not defined what amounts to the rest? She has also obtained “Mutigairi” share no one knows what it is and how much it amounts to and both the Posho and Coffee Mill to the exclusion of the other beneficiaries. The court finds the distribution in equitable and not in compliance with **71 of Law of Succession Act Cap 160**.

With regard to the 2nd application of Margaret Gathoni Muiruri; one of the co-wives of the deceased herein. She told the court through counsel that she ought to have been cited to obtain letters of administration for the deceased's estate. She states in her affidavit of 27th September, 2011 that;

- a. They were 5 wives; of the husband of the deceased herein; Loise Nduta Muiruri, Ngendo Muiruri, Wanjiru Muiruri (A), Wanjiru Mururi (B) and herself.
- b. The deceased husband Muiruri Githae died on 23rd April, 1965 he had several pieces of land among them Kibichoi/Komothai/452 which was registered in the name of John Mburu Muiruri the 1st born son of the eldest wife of Loise Nduta Mururi (deceased) herein.
- c. The Registered first born son (Mburu Muiruri) refused to recognize all the other family members as beneficiaries and this gave rise to **HCCC No. 1018 of 1980**- Nairobi. The matter was referred to arbitration. The land was found to belong to their late husband and each wife was to get a portion.
- d. That Loise Nduta Muiruri was not the exclusive registered owner of the said land.

Jane Wanjiru Muiruri in her oral testimony stated that with regard to the other families their father died in

1965 and they did not obtain any property from the deceased father's estate and it was obtained by Margaret Gathoni Muiruri, the Applicant herein.

Secondly, the court finds that Jane Wanjiru Muiruri produced copy of the Title- Exhibit 2- The land Komothai/Kibicho/452 is in the names of Alice Waithera Muiruri (wife to the deceased John Mburu Muiruri) Loise Nduta Muiruri , Lucy Njeri Muiruri and David Mugo Muiruri.

To determine conclusively that the Applicant herein is entitled to the said land or not, there must be full disclosure on the part of the Applicant of distribution of the estate of late Muiruri Githae who of the 5 families got what and therefore who is entitled to what in the said land of the deceased Loise Nduta Muiruri. Further, with regard to **HCC No. 1018 of 1980** this Court was not furnished with the outcome/decision in relation to distribution of the Muiruri Githae estate and of the arbitration award. Ideally, the property of Muiruri Githae ought to have been distributed in all 5 homes as provided in **Section 40 of Law of Succession Act Cap 160.**

Thirdly, the Applicant ought to disclose her share of inheritance from the estate of the deceased Muiruri Githae and the portion of other 5 homes before claiming from the co-wife's estate.

Reference is made to the affidavit provided by Jane Muiruri - Exhibit 3 which the Applicant Margaret Gathoni Muiruri stated they would remove Josephine Wanjiru's name from Plot No. 478/Title No. 126/541). If they were then left with that share of the deceased Loise Nduta Muiruri in Plot No 478, after removing their names from the Society's list they cannot benefit from Kibicho/Komothai/452.

The upshot of the 2 applications is as follows;

With regard to the application filed on 22nd June, 2011 by the Applicant Josephine Wanjiku Muiruri, the Court orders;

1. a) The grant of 16th March, 2011 in Kiambu Chief Magistrate's Court Succession 163/05 obtained by Jane Muiruri is annulled and revoked forthwith under **Section 66 & 76 of Law of Succession Act Cap 160.**
- b) By virtue of **Section 66 of the Law of Succession Act Cap 160** this Court appoints;
 - i. Josephine Wanjiru Muiruri
 - ii. David Mugo Muiruri as administrators of the estate of the deceased.
- c. The four (4) children of the deceased Loise Nduta Muiruri and six (6) grand children of the deceased her late son John Mburu Muiruri are the beneficiaries of the estate of the deceased. They are to discuss, agree to a fair and equitable distribution of the estate of the deceased's estate for the mode of distribution to be followed. If parties do not agree then each party is at liberty to apply to the Court to determine.
- d. With regard to the application of 16th March, 2011 it is dismissed for non disclosure of material facts.
- e. Each party to bear its own costs.

READ AND SIGNED AT NAIROBI THIS 29TH DAY OF JANUARY, 2015

M. MUIGAI

JUDGE

In the presence of

Ms. Kinyua holding brief for Mr. Murage Kibwa for the Applicants.