



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 828 OF 1994

IN THE MATTER OF THE ESTATE OF WILFRED THUO NGUGI (DECEASED)

GRACE THUO NGUGI.....APPLICANT

CATHERINE NJERI MAJANI

PAULINE MUTHONI MUNGAI

TERESSIA MBUTU MUNGAI

GRACE WANJIRU B MUNGAI

(THE LEGAL REPRESENTATIVE OF THE LATE

JOSEPHINE WANGARI MUNGAI (DECEASED)APPLICANTS

-VERSUS-

NELSON NGUGI THUO1ST RESPONDENT

DANIEL GATENJWA THUO2ND RESPONDENT

R U L I N G

1. On 31st January 2012 Grace Thuo Ngugi a beneficiary of the Estate of Wilfred Thuo Ngugi, filed a summons for revocation of Grant. On 13th November 2012 Catherine Njeri Majani, Pauline Muthoni Mungai, Teresia Mbutu Mungai and Grace Wanjiru Mungai jointly also filed summons for revocation of the same Grant. They shall all hereinafter be called the Applicants.

2. The two summonses which have been consolidated and will be considered together were taken out pursuant to **Section 76 (d) 11, Rule 44** of the **Law of Succession Act (Cap 160 Laws of Kenya** and **Rule 40 (1)** of the **Probate and Administration Rules**) and **Section 3 & 43 (a) of CPC**. Both summonses are for revocation of Grant issued on 7th December 1995 to Lillian Muthoni Thuo and Daniel Gatenjwa Thuo and confirmed on 4th October 2011 to Nelson Ngugi Thuo and Daniel Gatenjwa Thuo. Nelson Ngugi Thuo was appointed as an Administrator *de bonis non* upon the demise of Lillian Muthoni Thuo on 17th July 2003.

3. The Summons for Revocation dated 31st January 2012 is predicated on the ground that the second Administrator has refused to proceed diligently with the Administration of the Estate. The grounds in the

Summons for Revocation dated 13th November 2012 are that the Administrator has failed to distribute the Estate among all beneficiaries according to the wishes of the deceased. Further that the grant was obtained fraudulently without disclosing full inventory of all the assets of the deceased or, giving the respective beneficiaries their shares.

4. Grace Thuo Mwangi swore an affidavit in support of the application dated 31st January 2012 stating that the second Administrator has refused to execute all the documents necessary to wind up the Estate and transfer title to each beneficiary. That the Grant and the mode of distribution of the Estate was agreed to and that land parcel No. Dagoretti/Uthiru/443 was to be divided among four beneficiaries. That however, the Administrator has refused to confirm the Grant and sign transfer to the respective beneficiaries.

5. Pauline Muthoni Mungai swore an affidavit of even date to support the application dated 13th November 2012 on her own behalf and on behalf of the other Applicants. In the said affidavit she deponed that she and the other four Applicants are the daughters of the late Josephine Wangari Mungai and granddaughters of Wilfred Thuo the deceased. That the beneficiaries of the Estate of Wilfred Thuo were:

- 1) Grace Wanjiru Thuo
- 2) Nelson Ngugi Thuo
- 3) Ann Wairimu Thuo
- 4) Daniel Gathanjwa Thuo and
- 5) Josephine Wangari Mungai (deceased)

To whom the Respondents were to distribute the Estate in equal share.

6. The deponent stated that the Estate of the deceased comprises assets as follows:

- 1) Plots No. Dagoretti/Uthiru/665,694,695,697,698,699 and 700.
- 2) Land parcel No. Dagoretti/Uthiru/443
- 3) Shop at Ndumbuini (which the Administrator did not disclose)

Pauline also deponed that the distribution was not done in accordance with her grandfather's wishes, since he had desired that the beneficiaries should receive equal share in the Estate. Further that Ann Wairimu did not get a share of the plots, while land parcel No.443 was distributed only among four beneficiaries leaving out the Estate of Josephine Wangari.

7. The two Administrators are the Respondents herein. The 1st Respondent Nelson Ngugi Thuo, swore an affidavit in reply on 21st November 2012 and deponed that the Applicants in the Summons for Revocation dated 13th November 2012 are indeed the children of his late sister Josephine Wangari Mungai, who, at the time of her death, was married and living with her husband and children. That her husband Francis Mungai, is a wealthy man with a vast estate in Ongata Rongai in Ngong area of Nairobi, and at no time did the deceased Wilfred Thuo Ngugi provide for the Applicants.

8. The 1st Respondent deponed that as a show of good faith they have provided the Applicants with property out of the Estate of the deceased and; that the Applicants were present in court and consented to the schedule of properties and did not object to the confirmation of grant; that plot No. Dagoretti/Uthiru/443 was an inter-vivos gift given to the two Administrators, by their grandfather and does not belong to the Estate of the deceased. Lastly, that the process of winding up the Estate has

commenced and it would be expensive to restart the process after 18 years, especially when they have used their own funds to subdivide the property.

5. The 2nd Respondent Daniel Gatenjwa Thuo filed a Replying Affidavit sworn on 4th December 2012, in which he stated that all along, the Applicants participated in the distribution of the Estate of the deceased. That the Applicants colluded with his Co-Administrators to sneak in a consent which was strange to him and used it to obtain the certificate of confirmation. The Respondent also deponed that the deceased sister who is the mother of the Applicants was adequately provided for, considering that she was married and was living with her husband at the time of her death. That the Applicants are living in their father's property.

6. The Respondent further averred that the shop referred to in their application did not belong to the Estate of the deceased and the alleged wishes of the deceased had not been disclosed. That changing the agreed mode of distribution at this point would prejudice many persons as they have settled on, and developed their respective parcels of land. That the Applicants have not disclosed any justifiable reasons for revoking the grant and reopening a matter that has been pending since 1994. Lastly that the Applicants have not shown proof that they are the legal representatives of Josephine Wangari Mungai.

7. Mr. Nyangau for the Applicants filed written submissions dated 17th December 2013 in which he basically reiterated the grounds of the summons for revocation dated 13th November 2012. He submitted that the late mother of the Applicants was a direct beneficiary of the Estate of the Deceased among other children and was entitled to an equal share thereof. That therefore, the Applicants were only claiming their rightful share as daughters of Josephine Wangari Mungai who ought to have an equal share in the Estate.

8. In his view the Grant herein was obtained fraudulently and any distribution made pursuant thereto should be set aside and/or nullified and fresh distribution ordered in the best interest of justice.

9. M/s. Kivuva Omuga Advocate's filed submissions dated 4th February 2014 on behalf of the 1st Respondent. They set out the provisions of the law under **Section 76 of the law of Succession Act**, which provides that the court is not bound to revoke a grant even where a case has been set out – see the case of **Kipkurgat arap Chepsiror and others vs. Kisugut arap Chepsiror CACA No. 24 of 1991**. They also pointed out who a beneficiary is under Section 29 law of Successions Act.

10. They argued that the Applicants fully participated in the process of acquiring the Grant and further that they are granddaughters and have not demonstrated that they were maintained by the deceased before his death, but that in any case, they have been given property in the grant by virtue of their mother even as they now seek equal share.

11. I have considered the application and the response thereto together with the rival arguments from the respective counsels. The Impugned grant was issued on 7th December 1995 in the joint names of the Lillian Muthoni Thuo and the 2nd Respondent. The Applicants claim that the proceedings leading to the grant were defective in substance, and that the grant was obtained fraudulently by failure to disclose some of the assets of the deceased's Estate. From the record I note however that the Applicants were willing participants in the proceedings that led to the issuance of Grant and later on to the confirmation thereof.

12. It seems therefore that the main contention by the Applicant in the Summons dated 31st January 2012, is that the Administrators have failed to diligently distribute the Estate of the deceased, in accordance with the schedule of distribution submitted to court along with the application during the confirmation of Grant, while the actual contention of the Applicants in the Summons dated 13th November 2012, is that they have not been adequately provided for.

13. If that be the case, these complaints can be addressed without necessarily revoking the Grant. The beneficiaries signed consent for the two Administrators to obtain Certificate of confirmation of Grant and the process leading thereto has not been impugned. This however does not give the Administrators

license to distribute the Estate in a manner that is not transparent or which disadvantages any of the beneficiaries.

14. There is no dispute that the Applicants in the Summons dated 13th November 2012 are the children of Josephine Wangari Mungai (deceased), nor that the said Josephine Wangari Mungai, together with Grace Thuo Ngugi, Nelson Ngugi Thuo, Daniel Gatenjwa Thuo and Ann Wairimu were the children of Wilfred Thuo Ngugi the deceased and his wife Lillian Muthoni Thuo, also deceased.

15. The argument of the Respondent that the four Applicants have no claim to their grandfather's Estate because their mother was married to an able man would give effect to George Orwell's saying in his famed book Animal Farm that "**some animals are more equal than others**". Each of the children of the deceased is entitled to a share of their father's Estate in equal share, since there is no evidence that the deceased gave expression to contrary instructions before his death. This includes Josephine Wangari Mungai who is survived by the four Applicants herein.

16. M/s. Kivuva Omuga Advocates have argued that the four Applicants' claim for adequate provision is based on greed and not the law since their grandparents were not bound to make any provision for them, their parents being able. The 1st Respondent also argued that they had provided the Applicants with an inheritance just as a show of good faith. From the material before me, I note that what the Applicants are claiming is their mother's rightful share of the Estate of her father. They are not each asking to be given a share equal to other beneficiaries.

17. **Section 29 (a) Law of Succession Act** is very clear on the meaning of a dependant. Under the Act, a dependant includes ... "**the children of the deceased whether or not maintained by the deceased immediately prior to his death**". In the circumstances there is no requirement for them to prove that they were dependants of the deceased before his death. Whether or not their late mother was married and the financial stature of her husband is neither here nor there since none of these facts by itself can disinherit her of her father's Estate. Ann Wairimu is also entitled to equal share unless she herself has given up her claim to any part of the Estate.

18. The schedule of distribution filed together with the application for compensation does lend credence to the grievances of the Applicants in both Applications. It has taken inordinately long from the time the Grant was first issued in 1995 to distribute the Estate. Secondly, there is no evidence that the 4 acres of land that is parcel No. Dagoretti/Uthiru/443 was gifted inter vivos to the two Administrators by their grandfather, as they have argued. In any case they included it in the list of assets of the deceased and distributed it among four beneficiaries, leaving out the Estate of Josephine Wangari Mungai. I also note that although Ann Wairimu also a married daughter of the deceased received a portion out of plot No. 443, she did not inherit anything out of the seven other plots measuring $\frac{1}{4}$ acre each.

19. Inconvenience to those who inherited what should rightfully have gone to other beneficiaries, cannot be reason enough to let matters lie when some beneficiaries have been disinherited. In any case there is no evidence that this Applicants contributed to the delay in winding up the Estate.

20. For the foregoing reasons I find in favour of the Applicants in the two applications and order that:

- 1) The Administrators move with alacrity to re-distribute the Estate of the deceased in a more equitable manner.
- 2) The Estate be distributed among the five beneficiaries in equal share, unless any of them relinquishes part of their share and if so this shall be stated in court.
- 3) The fifth beneficiary is the Estate of Josephine Wangari Mungai.
- 4) The Administrators shall within 3(three) months of this ruling file a schedule of the proposed re-distribution of the Estate.

5) No orders as to costs.

SIGNED DATED and DELIVERED in open court this **20TH** day of **January 2015**.

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L. A. ACHODE

JUDGE