



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

SUCCESSION CAUSE NO. 654 OF 2009

IN THE MATTER OF THE ESTATE OF CHRISTOPHER

NATHANIEL WAUDO SIGANGA.....DECEASED

AND

EMY NAWANJAYA SIGANGA.....PETITIONER

VERSUS

1. ELIUD LUSINDE SIGANGA

2. DAVE LUNGAHO SIGANGA.....OBJECTORS

RULING

INTRODUCTION:

1. CHRISTOPHER NATHANIEL WAUDO (hereinafter referred to as “the deceased”) died on 17/03/2009. He was survived by a widow, NAOMI ILAMWENYA SIGANGA and 17 children among them the Petitioner/Administratrix herein EMY NAWANJAYA SIGANGA and the Objectors DAVE LUNG’AHO SIGANGA and ELIUD LUSINDE SIGANGA.
2. The Petitioner herein petitioned for Letters of Administration and the representation to her was issued by this Court on 24/08/2010. On 23/03/2011 the Petitioner filed a Summons for Confirmation of the Grant where her prayer was that all the deceased’s property then disclosed therein do devolve to her by being the sole beneficiary of the deceased’s estate.
3. On 17/05/2011 the Objectors’ herein filed a Summons for Revocation of the Grant aforesaid. The same was premised on three grounds and supported by the Affidavit of DAVE LUNG’AHO SIGANGA.
4. The Summons for Revocation aforesaid came before different Honourable Judges (*Thuranira and Dulu, JJ*) on several occasions where several directions were given on service upon all the beneficiaries of the Estate. On 08/10/2014 this Court gave directions, upon the concurrence of both parties to hear the said Summons for Revocation by way of the affidavit evidence where the parties were to file their submissions thereto. Both parties eventually filed their written submissions and the matter was scheduled for this ruling. This ruling is therefore on the application for Summons for Revocation of Grant issued 04/05/2011 and filed in Court on 17/05/2011 (hereinafter referred to as “the Summons”).

THE SUMMONS & SUBMISSIONS:

5. As earlier on stated, the Summons was made on three grounds namely that:

(i) The Petitioner left out the other surviving children of the deceased and indicated that she was the only surviving beneficiary of the estate.

(ii) Some properties in the deceased's name were not included and as such they risk to be wasted instead.

(iii) All the above was done by the petitioner with full knowledge of the existence of the other beneficiaries and the properties with the sole purpose of disinheriting the other lawful beneficiaries.

6. The Summons was also supported by one of the beneficiaries called WALTER WESONGAH SIGANGA who swore an Affidavit after being duly served with the Notice of the application for Revocation of the Grant pursuant to Rule 44(3) of Probate and Administration Rules. The same was sworn on 18/06/2013 and filed in Court on 11/06/2014. The said Affidavit also raises the issue of intermeddling with the deceased's estate by the Petitioner herein.

7. On 10/11/2014, the Objectors filed their written submissions where they expounded on the foregone grounds and called for the grant of the prayers sought in the Summons. The Objectors further relied on the judicial decisions of G.J. Khaluba Mulala vs Wilson Wakhungu Makumba(2013) eKLR . In Re Estate of James Thuo (Deceased) (2008) eKLR, In Re- Estate of Nyatogo Opondo (Deceased) (2008) eKLR and Esther Wamuya Gilthui & Another – vs – Wanjira Githini (2006) eKLR in support of the application.

The Objectors also raised the issue that the Petitioner's Counsel, Mr. Joseph Shem Elung'ata, was unqualified having been inactive since 2009, but in the submissions.

THE RESPONSE & SUBMISSIONS:

8. The Petitioner filed her Replying Affidavit sworn on 23/05/2012 on the very day. In calling for the dismissal of the Summons, the Petitioner described herself as truly one of the daughters of the deceased and that her reference as the sole widow of the deceased was but a typographical error. She also admitted that all those named in paragraph 6 of the Supporting Affidavit of DAVE LUNG'ANO SIGANGA were true beneficiaries to the deceased's estate. To her surprise, the said Affidavit revealed other properties which were not in her knowledge and called for the same to be included in the list of the deceased's properties. She avers that she petitioned for the grant in the manner she did so as to take care of her sole interests given that all the other children and beneficiaries aforesaid had been given their own properties elsewhere and the Petitioner was not in any interfering with them. She sees the Summons as having been filed in bad-faith and an attempt to disinherit her. She called for the dismissal thereof.

9. The Petitioner through her Counsels filed quite detailed submissions in opposition to the Summons wherein the Petitioner's above position was greatly expounded. In concluding her submissions the Petitioner indicated her comfort in either the Summons to be dismissed and the Objectors asked to take part in the confirmation of the Grant where the issues raised would be then looked at or that a joint-grant be issued in the Petitioner and the Objectors' names and thereafter confirmation of the grant to follow.

ANALYSIS AND DETERMINATIONS:

10. This Court would wish to point out that from the material laid before Court, it is clear that the parties would have easily reached a compromise position on the best way forward had they engaged in an amicable resolve of this matter. I say so because what the Objectors are seeking and the Petitioner's position as disclosed in her submissions point to that direction. This is a matter which had the Counsels

herein taken a lead role in seeking a middle-ground, high are the chances that there would have been no need of spending the already limited judicial time in coming up with this ruling. I therefore call upon Counsels, as Officers of this Court, to remain alive to the dictates of Article 159 of the Constitution of Kenya and to take deliberate steps to assist in early resolutions of disputes. Indeed without saying, a dispute resolved by the involvement of the parties is more acceptable and owned by the very parties as opposed to where a determination is made by a Court of law.

11. Be that as it may, it remains a fact that the Petitioner presented the Petition for Grant of the Letters of Administration in her capacity as the widow (See Form P & A 80). It also remains clear that the Petitioner in so participating aforesaid indicated on oath that she was the only beneficiary to the estate of the deceased herein (See Form P & A 5). I have also seen the Gazette Notice No. 3048 wherein the Petitioner is described as the deceased's widow. She also confirms that the persons mentioned by the Objectors are truly her siblings and that they are also entitled to benefit from the deceased's estate (See paragraph 6 of the Petitioner's Replying Affidavit sworn on 23/05/2012). It is further agreed that the assets which were not included as part of the deceased ought estate to be so added accordingly.

12. This Court is not about to concede to the explanation given by the Petitioner on why she described herself as a widow instead. It cannot be true that it was a typographical error as the Petitioner would have taken steps to put the record straight especially when the Gazette Notice No. 3048 came up in the Kenya Gazette. The petitioner knew the intricacies involved when the Petitioner is presented as a widow and likewise when the Petitioner is presented a child of the deceased. She easily chose the avenue of being a widow to avoid in-depth scrutiny and that conduct came into conflict with the law and not to say what is reasonably expected of a citizen under Article 10 of the Constitution of Kenya.

13. Equally, this Court is not surprised of the reasons given why the Petitioner left out the other beneficiaries, her siblings when she stated that she took out the proceedings to only take care of her own interests in the estate since the others had all been given their shares elsewhere by the deceased. That may appear persuasive but it infringes the express and mandatory provisions of Section 51(2)(g) of the Law of Succession Act which requires a full disclosure and naming of all the surviving heirs and beneficiaries of the deceased. As a show of good faith and transparency, the Petitioner remained under a legal duty to make a full disclosure and to make all her siblings aware of the proceedings; after all If what she says is true she did not expect any objection from the other beneficiaries. This therefore brings us to the inevitable conclusion that the non disclosure was deliberate and aforethought.

14. It is also important to note that the non-inclusion of the deceased's assets in the inventory infringed Section 51(2) (h) of the Law of Succession Act. However, I am of the view that the Petitioner was reasonably unaware of the said properties otherwise there would have not been any difficulty in making their inclusion in the inventory save if the Petitioner was of the view that such properties were given to her other siblings as hereinbefore alleged.

15. The upshot is therefore that the issuance of the Grant of representation to the Petitioner herein and in the circumstances of this matter was preceded by conduct and acts which fell below the expected legal bar hence calling for Section 76 of the Law of Succession Act to put right the situation. The Grant issued on 24/08/2010 to the Petitioner, EMY NAWANJAYA SIGANGA cannot therefore legally stand.

16. A further look at the Summons reveal that the same did not indicate or suggest what happens when the Grant is successfully revoked. That position therefore exposes the estate to having no Administrator(s) hence vulnerable to intermeddling. This Court will move to forestall such a situation.

17. With a view of having an early determination of the matter given its age and the number of persons involved and being guided by Section 66 of the Law of Succession Act, this Court hereby makes the following orders: -

- (a) The Grant of Letters of Administration issued on 24/08/2010 to the Petitioner EMY NAWANJAYA SIGANGA be and is hereby revoked.

- (b) A fresh Grant be issued in the joint names of EMY NAWANJAYA SIGANGA, ELIUD LUSINDE SIGANGA and DAVE LUNG' AHO SIGANGA.
- (c) Either of the said three Administrators or all of them shall file Summons for Confirmation of the fresh grant within 21 days of the issuance of the Fresh Grant and serve it upon all the beneficiaries to the estate of CHRISTOPHER NATHANIEL WAUDO SIGANGA.
- (d) A date for directions shall thereafter be taken at the Registry, but within 40 days of this ruling.
- (e) Costs of the application follow event and shall be borne by the Petitioner.

DATED, DELIVERED AND SIGNED AT KAKAMEGA THIS 12TH DAY OF FEBRUARY 2015.

A. C. MRIMA

JUDGE