



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**PROBATE AND ADMINISTRATION DIVISION**

**SUCCESSION CAUSE NO. 1475 OF 2014**

**IN THE MATTER OF THE ESTATE OF STANLEY KIMANI KARANJA (DECEASED)**

MONICA WANGUI KIMANI .....1<sup>ST</sup> APPLICANT

JOHN KARANJA KIMANI .....2<sup>ND</sup> APPLICANT

- Versus -

JOSPHAT MBURU WAINAINA

*(Sued in his capacity as the court appointed*

*Administrator of the Estate of the late*

*Wainaina Karanja) .....RESPONDENT*

**RULING**

1. In their Summons dated 22<sup>nd</sup> May 2014 brought under **Section 76** of the **law of Succession Act** and **Rule 44(1)** of the **Probate and Administration Rules**, the Applicants Monica Wangui Kimani (1<sup>st</sup> Applicant) and John Karanja Kimani (2<sup>nd</sup> Applicant) are seeking in the main, the revocation of the grant of Letters of Administration for the Estate of Stanley Kimani Karanja, issued and confirmed to Wainaina Karanja. They also, seek that the disposition of the deceased's properties by Wainaina Karanja, and in particular the sale of land title No. Gatamaiyu/Kamuhege/T49 and Gatamaiyu/Kamuhege/102 be declared null and void.

2. The summons is grounded on allegations that upon his demise, the deceased was succeeded by his wife, the first Applicant; that the deceased's brother, Wainaina Karanja fraudulently and in disregard of the deceased's family applied for and obtained a grant of letters of administration on 25<sup>th</sup> May 1967 at the District African Court at Githunguri, which he used to sell the properties of the Estate of the deceased being Gatamaiyu/Kamuhege/T.49 and Gatamaiyu/Kamuhege/102. That Wainaina Karanja died and was succeeded by the Respondent Josephat Mburu Wainaina who is his son and the administrator of his Estate.

3. The first Applicant has sworn an affidavit dated 22<sup>nd</sup> May 2014 in which she deposes that she married the deceased on 14<sup>th</sup> April 1956 at Ngenda, Kiambu and they were blessed with two children,

Wanjiru Kimani and John Karanja Kimani the second Applicant. That upon the demise of her husband on 9<sup>th</sup> December 1962, Wainaina Karanja a brother to the deceased, petitioned and was granted Letters of Administration then referred to as certificate of success in April 1967, without her knowledge and with manifest intent to defraud the Estate of the deceased.

4. The Applicant further avers that the said Wainaina Karanja, while applying for the grant concealed from the court material facts, in particular that the deceased had a wife and children. That after he obtained the Grant, he transferred to himself and sold the only two properties of the Estate, namely Gatamaiyu/Kamuchege/T49 and Gatamaiyu/Kamuchege/102 to a third party, which rendered her and the children homeless and destitute.

5. The Applicant avers that she is now aged and unemployed and resides in a rented room at Gatamaiyu Township. That the said Wainaina Karanja has since died and his son, the Respondent has been appointed administrator of his Estate. The Applicant avers that she was not able to move the court earlier on, owing to her illiteracy and the fact that the matter had been submitted to alternative dispute resolution through family and clan organs as well as the Provincial Administration although this came to no avail.

6. Upon being served the Respondent filed a replying affidavit and deponed that he agrees that the 1<sup>st</sup> Applicant was married to the deceased but that they did not have any children together. That the identification card of the 2<sup>nd</sup> Applicant shows that he was born in 1968 approximately six years after the death of the deceased and therefore he cannot be his son. There is no evidence to show that Wanjiru Kimani was the daughter to the deceased. That Stanley Kimani was authorised by the family and clan elders to petition for the grant of letters of administration for his brother's estate in line with Kikuyu customary law as the 1<sup>st</sup> Applicant did not have children with him, and was therefore likely to remarry.

7. The Respondent further avers that Karanja disclosed to the court that the deceased had a wife but did not have children. That the family and the clan had proposed that the two properties be distributed immediately and the said parcels of land have since been transferred and have changed hands several times since 1968. It is the Respondent's view that the Applicants' actions are an afterthought because all along they were aware of the decision of the family and clan regarding the deceased's Estate.

8. Learned counsel Muthama submitting on behalf of the Applicant stated that the Respondent is the administrator of the Estate of Wainaina Karanja as is evident in the Nairobi High Court Petition No. 588 of 2012, where the Respondent's father had interfered with yet another sibling's land. That it is the duty of the Respondent as the administrator to ascertain and pay out of the Estate of the deceased all his debts and that he is the right person to make good the fraud perpetrated by the deceased his late father.

9. Mr. Muthama pointed out **Section 76 Law of Succession Act** does not limit the time within which an application for revocation may be brought and that a grant may be revoked or a nullified at any time if it was obtained fraudulently by making false statements or concealing material facts. He submitted that it would be in the interest of justice for the Application to be allowed as prayed.

10. Learned counsel Mr. Mwangi for the Respondent submitted that the Applicants have not shown that the Letters of Administration obtained by Wainaina Karanja were marred with certain procedural defects. He argues that the Estate of the deceased was subjected to Kikuyu customary law by virtue of **section 2(2) of the law of Succession Act**, since the law of succession had not come into force by then. That the Respondent petitioned for the grant of Letters of administration under the Kikuyu Customary law, where wives did not have priority in petitioning for grant of letters of administration, especially in cases where they had no children with the deceased.

11. Mr. Mwangi further contends that the 2<sup>nd</sup> Applicant's identification card shows that he was born after the deceased's death, and that there is no evidence to show that Wanjiru Kimani was the daughter of the deceased. That all through the 1<sup>st</sup> Applicant knew about the decision of the clan to have the Respondent petition for the letters of administration. Further that at the time Wainaina Karanja petitioned

for the letters of administration, there was no law that required a letter from a chief to disclose all the survivors of the deceased and family members having agreed that the deceased's land should go to him. Therefore it cannot be said that Karanja obtained the grant of letters as a result of a false statement or by concealment from the court material to this case.

12. I have perused the grounds of the summons for revocation together with the supporting and replying affidavit and the rival submissions of the counsels on record. There is no dispute that the Applicant was the widow of Stanley Kimani Karanja having wedded him in 1956 and he having demised in 1962. There is also no dispute that at the time of his death the deceased left behind two properties being, Gatamaiyu/Kamuchege/T.49 and Gatamaiyu/Kamuchege/102, which were inherited by the deceased's brother Wainaina Karanja in 1968 to the exclusion of the widow of the deceased.

13. The circumstances that can lead to the revocation of grant have been set out in **Section 76 Law of Succession**. For a grant to be revoked either on the application of an interested party or on the court's own motion there must be evidence that the proceedings to obtain the grant were defective in substance, or that the grant was obtained fraudulently by making of false statement, or by concealment of something material to the case, or that the grant was obtained by means of untrue allegations of facts essential in point of law

14. A grant may also be revoked if the person named in the grant has failed to apply for confirmation or to proceed diligently with the administration of the estate. See - **Matheka and anor v Matheka [2005] 1 KLR pg 456**. It may also be revoked if it can be shown to the Court that the person to whom the grant has been issued has failed to produce to the Court such inventory or account of administration as may be required.

15. Since the deceased died in 1962 however, the law applicable to this cause is the Customary law because the succession law did not come into existence 1981. To be precise the applicable law is kikuyu since both the Applicant and the deceased were of kikuyu descent. Under Kikuyu Customary Law, since the Applicant chose not to return to her father's home, or to be inherited by a brother of the deceased but remained in the deceased's house, upon her husband's demise, according to Conran's "*Restatement of African law: 2 Kenya. The Law of Succession*," First Edition 1969 pg 11-15, the Applicant had a right of use during her life time, of the land left behind by the deceased. At her death that land would still belong to the deceased to be divided among his sons with her including those she may have had by a levirate union after the deceased's demise.

16. Indeed Section 76 of the law of succession Act states that a grant may at any time be revoked, or annulled by the court if it finds that it was obtained fraudulently by making of false statements, or concealing material facts. This may appear to place no time limit within which an application for revocation may be brought. The Probate Court is a court of Equity and has very wide discretion to aid the interest of justice. However, Equity aides the vigilant and not the indolent. It is not in dispute that the deceased whose Estate is in question died in 1962, or that both suit properties were sold and or transferred to third parties in 1968 or that Wainaina Karanja the administrator who is accused of perpetrating the malfeasance has since died.

17. It is therefore my considered view that the interest of the Applicant has been extinguished by effluxion of time since the suit property has already been transferred to innocent third parties who had no notice. The Estate is no longer available to enable her to enjoy her right of life interest and the administrator of the Estate of Stanley Kimani Karanja against whom she should have brought her claim has also died.

In the premise I find that the summons for revocation dated 22<sup>nd</sup> May 2014 cannot succeed and is therefore dismissed.

**SIGNED DATED and DELIVERED** in open court this **24<sup>th</sup> day of March 2015**.

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**L. A. ACHODE**

**JUDGE**