

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

SUCCESSION CAUSE NO. 2301 OF 2009

IN THE MATTER OF THE ESTATE OF JANET WAMBUI KIHU (DECEASED)

BETWEEN

LEAH WAHU KIMANI..... 1ST APPLICANT

MACHARIAH NJOROGE..... 2ND APPLICANT

VERSUS

FRANCIS NGANGA KIHU..... RESPONDENT

JUDGMENT

1. The deceased died on 20th October 1999. The respondent (her son) petitioned for a grant of letters of administration in Thika Chief Magistrate's Court Succession Cause No. 393 of 2007. The grant was issued on 24th July 2008 and confirmed on 15th April 2009.

2. The 1st applicant was the daughter in-law of the deceased. She was the wife of the son of the deceased called Kimani Kihui. The 2nd applicant was the grandson of the deceased. His mother was Njoki Kihui who died in 1952. Njoki was the daughter of the deceased. The 1st applicant's case was that she was a beneficiary of the deceased's estate who had not been informed of the filing of the petition and subsequent proceedings. The record shows that she consented to the confirmation of the grant, but denied that she had given the consent. She denied the fingerprint impression on record, saying that it was forgery as she always executes her documents by signing. The 2nd applicant's case was that since 1964 she was staying with the deceased on the said land (**LOC.5/GITURA/120**) which she left to him. He had, nonetheless, not been listed as a beneficiary and neither had his consent been sought or procured by the respondent.

3. Section 51 of the Law of Succession Act (Cap 160) and Rule 7(1)(e) of the Probate and Administration Rules provide that an application for grant of letters of administration should contain the names and addresses of all surviving spouses, children, parents, brothers and sisters of the deceased, and of the children of any child of his or hers then deceased. The non-disclosure of the 2nd applicant as a grandson of the deceased, and therefore dependant of the deceased, was concealment of a material fact.

4. Secondly, the allegation that the consent of the 1st applicant was forged was not countered. Rule 40(8) of the Rules provides for the requirement of consent of all dependants and other persons who may be beneficiaries entitled to the estate in the application for confirmation. The 1st applicant's consent was not sought, neither was the consent of the 2nd applicant sought or obtained.

5. These are the reasons why the grant that was issued to the respondent on 24 July 2008 and confirmed on 15 April 2009 is ordered revoked. The entire estate shall revert into the names of the deceased. Any transactions resulting from the grant are revoked. Costs shall be paid by the respondent.

DATED at NAIROBI this 29th day of April 2015

A.O. MUCHELULE

JUDGE

DELIVERED at NAIROBI this 30th day of April 2015

W. MUSYOKA

JUDGE