



**REPUBLIC OF KENYA**

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

**SUCCESSION CAUSE NO. 865 OF 2012**

**IN THE MATTER OF THE ESTATE OF THE LATE KARANJA KIAMWENE (DECEASED)**

NAHASHON NG'ANG'A.....APPLICANT

**VERSUS**

VIRGINIA WAITHERERO.....RESPONDENT

**RULING**

1. The Applicant Nahashon Ng'ang'a Karanja is one of the three sons and two daughters of the deceased, the late Karanja Kiamwere who died on the 18<sup>th</sup> July, 2006.

Upon his demise, it is alleged that one Virginia Waitherero who was his house-help secretly and fraudulently applied for letters of administration in the Resident Magistrate's Court at Eldama Ravine in Succession Cause No. 14 of 2007 where she misrepresented, made false statements and concealed material facts to the court to be issued with the said letters of administration. Upon discovery that the Respondent had fraudulently obtained the said grant, the Applicant applied to this court by summons for revocation of the grant – under Section 76(a)(b) of the Law of Succession Act, on the 17<sup>th</sup> December, 2012.

2. The grounds upon which the application is made is that the proceedings to obtain the said grant were defective in substance and fraudulent as the Respondent concealed important information from the court, and misrepresenting herself as the widow of the deceased whereas she was not a widow and claiming to be a beneficiary.

3. In his affidavit in support of the application, the Applicant states that the deceased had only one wife, his mother Bilha Njeri Karanja and had left behind five children, three sons and two daughters, and that the Respondent was never a wife of the deceased but his house-help who had been previously married and had five children from her previous marriage.

It is stated that the Applicant secretly applied for grant without involving the deceased's family and children. The grant was confirmed on the 10<sup>th</sup> September, 2008. It is deposed that the Applicants were unaware of the Succession Cause in the Resident Magistrate's court at Eldama Ravine and only came to know about it after it was confirmed hence this application, and that the estate has not yet been administered.

4. In the said application, it is stated that the only property left behind was property described by the Respondent as **Maji Mazuri/373** yet the property is known as **Maji Mazuri/665** and a certificate of official search annexed to the affidavit confirm that the said property measures 1.778 Ha whose value

is much more than the shs. 100,000/= the Respondent stated to be able to fit into the jurisdiction of the Resident Magistrate's court. It is further stated that the Respondent secretly and through misrepresentation obtained a second death certificate while the Applicants had obtained another for her to be able to apply for the grant. Both copies of the death certificates are attached to the affidavit in support of the application. No explanation was given by the Respondent why she had to apply for a second death certificate.

5. As a result of the above obvious concealment of material facts that the deceased left behind another wife and children and moving ahead secretly and obtaining letters of administration and getting them confirmed, this application was filed for the annulment of the whole proceedings.

6. Upon the Respondent being served with the application, she filed a replying affidavit where she depones that she was indeed a wife of the deceased and not a house-help. She further states that she had consulted the children of the deceased who refused to join her to apply for the grant, but kept quiet about the mother of the children. She indeed confirms that she had five children from a previous marriage and that the deceased accepted them and took them in as his children. She therefore denies having obtained the grant fraudulently.

7. I have considered the application, the supporting affidavit and the replying affidavits in opposition to the application.

It is not in doubt that the deceased was survived by his wife and children, the Applicants siblings who were not included in the application for the grant of Letters of Administration. It is also clear that their consent was not obtained nor did they denounce their right to be enjoined in the application. As to the question whether or not the Respondent was a wife to the deceased, it matters not at this point as the law is clear on who should have priority in the application for grant of representation where the deceased dies intestate.

8. Section 66 of the Law of Succession Act, Chapter 160 Laws of Kenya give preference as follows -

- (a) *surviving spouse or spouses, with or without association of other beneficiaries,*
- (b) *other beneficiaries entitled on intestacy, with priority according to their respective beneficial interests as provided by part V,*
- (c) *the public trustee.*

However, if any of the above persons who have a right to apply do not, then, they may renounce their right to apply as provided under Rule 18 (*Part V*) of the Probate and Administration Rules.

9. It is the Applicants submission that they were not consulted and that the grant was obtained secretly and fraudulently as stated above.

Section 76 of the Act states that a grant of representation whether confirmed or not, may be revoked or annulled if the court decides, on application by any party that the proceedings to obtain the grant were defective in substance or was obtained fraudulently by making false statements or by concealment from the court material facts.

10. This court is satisfied that the Respondent obtained the grant by concealing relevant materials to the court by non-disclosure that the deceased had another family and children who were as of right entitled to apply, and that they did not denounce the right.

11. In her own admission in her replying affidavit, the Respondent stated that she applied for the grant alone as the children of the deceased refused to cooperate with her. She also obtained a second death certificate by giving false information to the area chief who wrote a letter to her indicating that she was a wife of the deceased to facilitate her to obtain a copy of the deceased's identity card and thereafter the

second death certificate. These acts say much, that she was not in good terms with the deceased's family and by inference, obtained the grant without involving the said family, her co-wife and the children.

12. In view of the above finding, and being guided by the Law of Succession Act, I find that the grant of letters of administration and the certificate of confirmation were fraudulently obtained, and I proceed to revoke them. In coming to the above decision, I have considered **Succession Cause No. 59 of 2004 In the matter of the Estate of Arthur Ng'ang'a Njuguna Wahoro** and **Succession Cause No. 155 of 2001, In the matter of the Estate of the late Mirachia alias Iracha Gatumo** where the court annulled letters of administration where the administrators had not involved the deceased's children and family.

13. Having revoked the letters of administration and the certificate of confirmation of grant issued on the 10<sup>th</sup> September, 2008 by this court, the Applicant and any other person entitled to apply may file the relevant petition in court.

14. This being a family dispute, I order that each party bears its own costs of the application.

**Dated, signed and delivered at Nakuru this 14<sup>th</sup> day of May, 2015.**

**JANET MULWA**

**JUDGE**

**In the presence of:**

Kamonjo - for Applicant

No appearance - for Respondent

Lina - Court clerk