



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERUGOYA

MISC. SUCCESSION APPEAL NO. 40 OF 2012

CHARITY NJOKI MUCHIRI.....APPLICANT

-VERSUS-

GERALD GICHIRA MUCHIRI.....1ST RESPONDENT

JAMES MURIUKI MUCHIRI.....2ND RESPONDENT

MUGO MWANIKI MUCHIRI.....3RD RESPONDENT

RULING

1. **CHARITY NJOKI MUCHIRI** is the applicant herein and has taken out Summons for Revocation of Grant issued before subordinate court on 15th September, 1994 to 1st Respondent and confirmed on 22nd August, 2003.

2. The grounds upon which the annulment of the said grant is based are as follows:

(i) That the proceedings to obtain the grant herein were defective in substance.

(ii) That the grant was obtained fraudulently by making of false statement and concealment from court with something material to the cause.

(iii) That the grant was obtained by means of untrue allegation of fact to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently.

(iv) That the persons to whom the grant was made has failed to proceed diligently with the administration of the estate.

3. The Applicant filed an affidavit in support of the application to revoke the grant and deponed that she is one of the daughters to the late **MUCHIRI NGARI** (deceased). She further deponed that the Petitioner never disclosed the existence of other beneficiaries or dependants to the deceased and proceeded to give the following list of all children to the deceased:-

(i) Gerald Gichira (1st Respondent)

(ii) Joseph Gachoki

- (iii) Margaret Muthoni
- (iv) Virginia Mwaura
- (v) Charity Njoki (Applicant)
- (vi) Nancy Wawira
- (vii) Esther Ndungu
- (viii) Beatrice Wagatura
- (ix) James Mwaniki
- (x) Monica Wanjiru (2nd Respondent)
- (xi) Mugo Mwaniki (3rd Respondent)

4. The Applicant further deponed that the property forming the estate left behind by the deceased was that parcel of land known as L.R. No. **KABARE/NYANGATI/2449** and that the Respondents divided the property among some beneficiaries secretly without involving all the beneficiaries and it is on the basis of that that she now seeks to have the grant nullified to enable all beneficiaries benefit.

5. The 1st Respondent, who was the petitioner and the administrator herein conceded the averment of the Applicant in his replying affidavit sworn on 23rd January, 2013. In the said affidavit, the 1st Respondent deponed that the deceased left behind 11 children. He however, failed to explain why in the petition for letters of administration he disclosed only 3 male children. He has however, deposed that all the daughters were married away and that is why he chose to ignore them arguing that under Kikuyu customary law a married daughter cannot inherit her father's property. He faulted the Applicant for undue delay by coming to court after 20 years.

6. This Court has considered the submissions made by both counsels of the Applicant and the respondents. I have considered the application and all the affidavits filed.

It is not disputed that the Applicant is a daughter to the deceased and therefore a dependant within the meaning given under **Section 29** of the **Law of Succession Act**. Indeed it is conceded by the administrator in a sworn affidavit under **paragraph 3** of the replying affidavit filed on 25th November, 2013 that the deceased had 7 other children who were not disclosed in the petition for grant of letters of administration. The reason given for such concealment is irrational and repugnant to justice. The 1st Respondent has sworn an affidavit indicating that they concealed the existence of the daughters to the deceased because they were married and that by virtue of marriage they were not entitled to any share in the estate.

7. The deceased in this cause died on 24th September, 1993. The applicable law in Kenya under **Section 2 (1)** of the **Law of Succession Act** is the Law of Succession Act. Kikuyu customary law does not apply here because the law says so. The deposition and the submissions made by the Respondents reflects a wrong notion or thinking that is not only unlawful but unconstitutional. The same as I have said is repugnant to justice and obviously has no place in our modern democratic and open society. I agree with the Applicant that the administration and distribution of the estate of the late **MUCHIRI NGARI** alias **WOLES MUCHIRI** was done in a discriminatory manner contrary to **Article 27** of the **Constitution**. The same is unacceptable and untenable. The law treats all children or dependants to a deceased person equally without any discrimination on grounds of gender or marital status.

The upshot of this is that the Summons for Revocation of Grant is allowed. The grant issued to Gerald Gichira Muchiri on 15th September, 1994 and confirmed on 22nd August, 2003 is nullified. All the

transactions done pursuant to the confirmed grant are hereby reversed. The Respondents shall pay costs. The family of the late Muchiri Ngari alias Woles Muchiri are at liberty to appoint 2 or 3 administrators who shall then be at liberty to apply for a fresh grant and confirmation as provided by the law. It is so ordered.

Dated and delivered at Kerugoya this 17th day of June, 2015.

R. K. LIMO

JUDGE

17.6.2015

Before Hon. Justice R. Limo

Court Assistant: Willy

Ngugi for Applicant present

Thungu for Respondent present

COURT: Ruling signed, dated and delivered in the open court in the presence of Ngugi advocate for Applicant and Ann Thungu Advocate for the Respondent.

R. K. LIMO

JUDGE

17.6.15