



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE 984 OF 2014

**IN THE MATTER OF THE ESTATE OF MUNGAI NDUNGU CHARAGU alias MUNGAI
NDUNGU WANDUNDU (DECEASED)**

OBADIAH NDUNG’U MUNGAI.....APPLICANT

VERSUS

VERONICAH WANJIRU.....RESPONDENT

JUDGMENT

By an application filed on 25th April, 2014 brought before this Court by the Applicant Veronica Wanjiru Mungai widow of the deceased is the summons for revocation of the grant issued on 23rd June, 1998.

The Applicant relied on the following grounds;

1. That the deceased died on the 24th May, 1988 and a grant of representation was issued to the Respondent on the 16th August, 2000;
2. That the Applicant is a son of the deceased and therefore a legitimate heir to the deceased’s property;
3. That the grant of representation issued on 16th August, 2000 was later amended and the amended grant of representation issued to the Respondent on 25th June, 2013.

By the supporting affidavit the Applicant deposed that he is son to the deceased and hence the legitimate heir to the deceased’s estate.

Before the Respondent applied for grant of letters of administration intestate for the deceased’s estate, she and the Applicant and other beneficiaries held discussions in the presence of village elders. It was amicably agreed that the Respondent would obtain L.R. No. Ndumberi/Ndumberi/1394 wholly. She obtained the grant and later confirmed the said grant and the said suit property was distributed to her absolutely.

The Respondent later had the confirmed grant of 16th August, 2000 rectified on 20th June, 2013 to include Gathatha Farmers Company Ltd share certificate No. 766 and she claimed that family members consented to her obtaining the shares absolutely.

The Applicant stated that he and the Respondent agreed to share 50%/50% the shares in Gathatha Farmers Ltd and as a result he received dividends up to 2013 when the same was stopped without notice

to him. On enquiring, he was informed that the Respondent obtained a grant that showed she was to benefit from the said share wholly. The Appellant stated he did not give consent to the amendment of the grant in 2013.

The Certificate Number 766 was transferred to Veronicah Wanjiru Mungai. Therefore he was deprived of his inheritance from his later father's estate. Consequently he filed the summons to revoke the grant because his consent was not obtained and he did not get any share of his father's estate.

The Respondents was served with the application through the advocate on record Kimani Gichohi & Company Advocates but she did not file a Replying affidavit or appear and attend Court. Finally on 13th May, 2015 a Notice of change of Advocates was filed and Kenya Human Rights Commission represented the Respondent. The Commission was duly served with the hearing notice as evidenced by affidavit of service filed on 28th July, 2015. The Respondent and/or the Commission did not appear in Court or present any reasons for the Court to consider. The hearing proceeded *ex-parte*.

Counsel for the Applicant mentioned in detail the particulars pleaded in the application and raised the following pertinent issues in a nutshell.

- a. The Applicant a son of the deceased was not consulted and he did not consent to the amended/rectified grant.
- b. The pleadings were defective as the beneficiaries consents were not obtained and filed in Court before the grant was rectified.
- c. The Respondent deponed in her supporting affidavit to the application for rectification that all family members consented to her obtaining the shares wholly but such consents were not presented in Court which was not true and no evidence to prove the same was produced.

For the above reasons the Applicant through Counsel sought revocation of grant as provided for in **Section 76 of the Law OF Succession Act Cap 160.**

ISSUES:

1. Is the Applicant beneficiary/dependant of the deceased?
2. Is the distribution of the deceased's estate fair just and equitable to all beneficiaries of the estate?
3. Was the grant obtained in accordance with the law?

LAW

Section 35(1) provides;

“Subject to the provisions of Section 40, where an intestate has left one surviving spouse and a child or children, the surviving spouse shall be entitled to;

- a. ***The personal and household effects of the deceased absolutely; and***
- b. ***A life interest in whole residue of the net intestate estate;***

Provided that, if the surviving spouse is a widow, that interest shall determine upon he remarriage to any person.”

Section 36(1) provides;

“where the intestate has left one surviving spouse but no child or children, the surviving spouse shall be entitled out of the net intestate estate to;

- a. ***The personal and household effects of the deceased absolutely; and***
- b. ***The first ten thousand shillings out of the residue of the net intestate estate, or twenty per centum thereof, whichever is the grater; and***

c. *A life interest in the whole of the remainder;*

Provided that if the surviving spouse is a widow, that life interest shall be determined upon her remarriage to any person.”

Section 38 provides;

“where an intestate has left a surviving child or children but no spouse, the net intestate estate shall, subject to the provisions of sections 41 and 42, devolve upon the surviving child, if there be only one, or be equally divided among the surviving children”

ANALYSIS

I have given due consideration of the evidence presented for revocation of the grant and wish to point out the following;

a. The letter from the Chief dated 25th March, 2014 indicated the deceased had two (2) wives;

Lilian Wanjiku Mungai - Mother to the Applicant and she is deceased.

Veronica Wanjiru Mungai - the Respondent 2nd wife and widow to the deceased.

b. The consent forms filed in **Succession Cause 97 of 1998 Kiambu Law Courts** did not disclose these facts by listing all the beneficiaries of the deceased's estate. The Applicant was left out and only the children of the 2nd wife, the Respondent filed consents to the grant.

Under Rule 40 of the Probate & Administration Rules this omission was illegal, irregular and invalid.

c. Where in a family of the deceased, there are more than 1 house/home/wife of the deceased, the law provides that the appointment of administrators who act as trustees and therefore include at least 1 representative from each house. **Section 84 Law of Succession Act Cap 160** envisages that the personal representative shall be a trustee for each of the houses/homes for purposes of distribution of the estate.

In the instant case the Respondent is the sole administrator for her house and also for the house of the 1st wife of the deceased. Again, this is unprocedural irregular and illegal.

The Respondent as the sole administrator would naturally not have the interests of the 1st family at heart instead her interest would focus onto her family to the detriment of the Applicant.

This Court is persuaded by the case of;

IN THE ESTATE OF EZEKIEL MULANDA MASAI P.A NO 4 OF 1992 where Hon. Justice Etyang (as he then was) found that the Petitioner/Respondent applied for and was granted letters of administration to administer the whole estate singly. The fact was that the deceased's estate was not distributed to all surviving widow and children of the deceased. The step mother of the Respondent and her elder son were left out. The grant was revoked.

This Court finds that the Applicant's application for revocation of grant and testimony in Court is not controverted by any other evidence. Despite service of the application and hearing notice, the Respondent did not attend Court.

The Applicant has proved grounds for revocation of grant under **Section 76(b) of Laws of Succession Act Cap 160**.

FINAL ORDERS

From the foregoing this Court order as follows;

1. The grant issued on 23rd June, 1998 confirmed on 16th August, 2000 and rectified on 20th June, 2013 is hereby revoked and all consequential transaction(s) if any
2. In order to avoid delay and to avoid undue inconvenience and expedite the distribution of the deceased's estate to all beneficiaries equitably I order a new and fresh grant in the names of two (2) administrators; namely **Ms VERONICAH WANJIRU MUNGAI** for herself and her children and **OBADIAH NDUNGU MUNGAI** for the 1st wife's house and siblings (if any)
3. The distribution of the deceased's estate shall be as follows;

The Applicant and Respondent.

- a. Land Parcel Ndumberi/Ndumberi/1394 wholly and absolutely to Veronica Wanjiru Mungai
 - b. Gathatha Farmers Company Limited Certificate No. 766 wholly and absolutely to Obadiah Ndungu Mungai son to the 1st wife of the deceased **LILIAN WANJIKU MUNGAI**(deceased)
 - c. The share certificate No. 766 in the name of **VERONICAH WANJIRU MUNGAI** is revoked forthwith and to be registered in the Applicant's name and he shall receive the dividends.
4. Each party shall bear its own costs of the suit.

READ AND SIGNED IN OPEN COURT AT NAIROBI THIS 25TH DAY OF SEPTEMBER, 2015

M. MUIGAI

JUDGE

In the presence of: