



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 2844 OF 2004

IN THE MATTER OF THE ESTATE OF JENIFFER WANGECHI KIBUCHI – (DECEASED)

RULING

1. This cause relates to the estate of Jenniffer Wangechi Kibuchi who died on 30th May 2004.
2. Representation to her estate was sought on 20th September 2004 by Geoffrey Karubiu Kibuchi in his capacity as her son – she was alleged to have been survived by her sons – Godfrey Karubiu Kibuchi, Ephantus Wachira Kibuchi, Martin Muriithii Kibuchi and Paul Macharia Kibuchi – and daughters – Lydia Wanjira and Elizabeth Nyambura Kabira. She was said to have died possessed of property described as Mutira/Kaguyu/1614. A grant of letters of administration intestate was made to the said Geoffrey Karubiu Kibuchi on 22nd November 2004.
3. The administrator sought confirmation of the grant by his summons dated 29th April 2005. The said application was allowed on 2nd November 2005, confirming the grant. An undated certificate to that effect was issued, and was collected from the court's registry by J.K. Kibichu & Co. Advocates on 24th November 2005. The estate was to be held by the surviving six children of the deceased as tenants in common, presumably in equal shares.
4. On 14th January 2010 a Summons for Revocation of Grant was lodged in the cause by Munene Wairangi, who claimed to be a brother-in-law of the deceased, being the brother of the deceased's husband, David Kibuchi Wairangi. He purported to bring the application on his own behalf and on behalf his brothers, Ngata Irangi, David Kibuchi Irangi, and their mother Margaret Muthoni Irangi. He complained that he and his brothers were not informed and involved when representation was sought to the estate of the deceased, given that Mutira/Kaguyu/1614 was family property, which the deceased held in trust the applicant and his siblings. He also alluded to some pending appeal, which the respondent knew about. He alleged that he only came to be aware of these proceedings when the process of their eviction from Mutira/Kaguyu/1614 commenced.
5. After the administrator respondent was served with the application, he swore a replying affidavit on 23rd April 2010. He asserted in the affidavit that Mutira/Kaguyu/1614 originally belonged to his late father David Kibuchi Wairangi and passed on his mother following his father's demise, and she was infact registered as the registered proprietor thereof on 26th February 1987. He denied that the property was held in trust by his mother for the applicant and his siblings. He asserted that the issue of a trust over Mutira/Kagunyu/1614 was conclusively determined by the Land Disputes Tribunal by its decision of 9th October 1998 which awarded Mutira/Kaguyu/1614 to the deceased. He stated that the decision of the Land Disputes Tribunal was not appealed against and the said award was made a decree of the court by the Nyeri Senior Principal Magistrate in **Nyeri PMCC Award No. 77 of 1999**. He stated further that the applicant sought to set aside the order making the Land Disputes Tribunals award a decree of the court.

The application was dismissed on 4th February 2000. The applicant then appealed against the said ruling in **High Court Civil Appeal No. 23 of 2000**, but the appeal was dismissed on 13th July 2009. He further averred that the applicant and his siblings were served with eviction notice in 2009 to vacate the property and there is pending in **Nyeri Principal Magistrate Court Civil No. 77 of 1999** an application filed in 2010 seeking eviction of the applicant and his siblings.

6. To his replying affidavit, the administrators respondent attached a number of annexures –

(a) A copy of the decision of the **Baricho Land Disputes Tribunal of 9th October 1999** in **Case No. 17 of 1997** between the deceased and Munene Irangi, F. Ngatia Irangi, David Kibuchi Irangi, Margaret Muthoni Kinyua and Ndiritu Gichuhi, where it was held that the Mutira/Kaguyu/1614 belonged to the deceased and that defendants do vacate the said parcel of land on or before 1st January 1999.

(b) A copy of the order made by the Senior Principal Magistrate on 16th December 1999 in **Nyeri Principal Magistrate Court Civil Award No. 77 of 1999** making the award of the Baricho Land Disputes Tribunal of 9th October 1999 a decree of the court.

(c) A copy of a notice to vacate Mutira/Kaguyu/1614 dated 9th December 2009 addressed to Munene Irangi, Ngatia Irangi and David Kibuchi Irangi.

7. The applicant did not respond to the replying affidavit by the administrator respondent.

8. Directions were given on 28th April 2010 that the revocation application be disposed of orally. These directions were modified on 11th June 2012 when the parties were instructed to file skeleton arguments to be highlighted. On 24th October 2012 it was further directed that the applications be determined on the basis of written submissions. The applicant filed his submissions on 17th October 2012, while the respondent filed his on 12th July 2012.

9. I have perused through all the papers filed in this matter, inclusive of the submissions by counsel for the parties.

10. The Summons for Revocation of Grant does not cite the provisions of the Law of Succession Act upon which it is premised, but revocation of grants is provided for in *Section 76* of the Law of Succession Act. It alleged that the grant herein was obtained fraudulently, that there was concealment of information and the making of false statements. The applicant and his siblings say that they were not informed of the commencement of the proceedings. The issue arising is whether there was obligation to inform and involve them.

11. The proceedings herein relate to the estate of Jenniffer Wangechi Kibuchi. She died intestate in 2004, the provisions of the Law of Succession Act therefore apply to the administration of her estate.

12. The law on applications for grants of representation is *Section 51* of the Law of Succession Act and Rule 7 of the Probate and Administration Rules. The relevant portion of *Section 51* provides as follows:-

“51(2) An application shall include information as to-

(a)...

(b)...

(c) ...

(d)...

(e)...

(f)...

(g) in cases of total or partial intestacy, 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;

(h)..."

The relevant portion of Rule 7 reads as follows:-

"7(1)... where an applicant seeks a grant of representation to an estate... the application shall be by petition... supported by an affidavit... containing... the following particulars-

(a)...

(b)...

(c)...

(d)...

(e) in cases of total or partial intestacy –

(i) the names, addresses, mental state and description of all surviving spouses and children of the deceased, or where the deceased left surviving spouse or child, like particulars of such person or persons who would succeed in accordance with Section 39(1) of the Act;

(ii)...

(iii)...

(f)..."

13. The two provisions are in sync, save that *Section 51(2) (g)* of the Act is a little broader than Rule 7(1) (e) (i) of the Probate and Administration Rules. Under *Section 51(2) (g)* of the Act, the petition must contain the names of parents, brothers and sisters of the deceased while under Rule 7(1) (e) (i) the parents, brothers and sisters of the deceased need not be disclosed unless it is a case where the deceased was not survived by spouse or children. Rule 7 is subsidiary to *Section 51(2)* of the Act, and therefore the provision in *Section 51(2)* of the Act take priority.

14. Going by the provisions in *Section 51(2)* of the Act, the petitioner ought to have disclosed the parents and siblings of the deceased. This was not done. Should the applicant his siblings and mother have been disclosed in the petition herein? I think not. The applicant and his siblings were not brothers of the deceased but of her deceased husband. The estate in question was not that of the deceased's husband, where it would have been mandatory to disclose the applicant and his siblings. The non-disclosure of the mother-in-law of the deceased did not contravene *Section 51(2)* of the Act as she was not the mother of the deceased. The failure to disclose the applicant, his siblings and mother did not violate *Section 51(2)* of the Act, and cannot be a basis for revoking the grant.

14. On whether there was a trust which should have provided basis for involving the applicant and his siblings in the administration of estate my view is that no trust was established by the applicant. He only mentioned at paragraph 10 of his affidavit that the said property was held in trust, but he adduced no evidence whatsoever to prove existence of such trust. Indeed, it is the administrator respondent who placed material before me to show that the issue of trust did come up in previous proceedings and was

formally determined by the Land Disputes Tribunal when it found for a fact that no such trust existed as the subject property was not family property, but property acquired by the husband of the deceased through sale. The Tribunal found that that there were land cases dating back to 1980 between the deceased's husband and other parties, and the disputed land was awarded to the deceased. Since no trust existed in favour of the applicant and his siblings there was no basis for involving the applicant and the others in the administration of the estate. The applicant alleges existence of a pending appeal, he adduced no evidence at all to prove pendency of any appeal against the award of the suit land to the deceased.

15. From the material before me, I do not find any basis at all for the revocation of the grant made on 22nd November 2004 on the grounds advanced by the applicant. For that reason the Summons for Revocation of Grant dated 14th January 2004 must fail. It is hereby dismissed with costs to the administrator respondent.

16. I note that the estate comprises of only one asset – Mutira/Kaguyu/1614 – situated at Kirinyaga County within the jurisdiction of the High Court of Kenya at Kerugoya. Consequently, I order that this matter be transferred to High Court of Kenya at Kerugoya for further handling.

DATED, SIGNED and DELIVERED at NAIROBI this 31st DAY OF January, 2014.

W. MUSYOKA

JUDGE