



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITALE

P&A NO. 130 OF 2011

ELIJAH MAGAL NGURA DECEASED

AND

MANGARIBA MNANGAT LOMUKE PETITIONER

R U L I N G

The Applicant/Petitioner, Mangariba Mngat Lokuke, petitioned this court on the 16th June, 2011, for grant of letters of administration respecting the estate of his late brother, Elijah Magal Ngura (herein the deceased), who died on the 9th April, 1984.

The petition was supported by an affidavit dated 14th June, 2011 deposed by the applicant in which it is averred that the deceased was survived by three sublings including the applicant and that his assets included a parcel of land described as Land Title No. West Pokot/Keringet/367 valued at Khs.1 (One) million.

After the usual preliminaries, grant of letters of administration intestate was issued to the applicant on the 23rd September, 2011 and confirmed on the 24th May, 2012.

The estate property i.e land parcel No. West Pokot/Keringet/367 was accordingly transferred to the applicant and a title deed issued in his name on the 12th September, 2012.

However, on the 18th November, 2012, **Selina Chepkemei Elijah (herein, the objector)**, filed the present application dated 6th November, 2012, for revocation or annulment of the grant issued to the applicant/petitioner on grounds that the grant was obtained fraudulently and in secrecy.

In her supporting affidavit dated 6th November, 2012, the objector avers that the deceased was her lawful husband and that he died on 12th March, 1999 and not the 9th April, 1984. That, she is the only widow to the deceased and the two were blessed with a surviving daughter called Grace Chelatamet. Other children passed on. That, the applicant is a brother to the deceased and has prevented her (objector) from inheriting the deceased's property allegedly because she did not bear a son with the deceased. That, the applicant had no right to inherit and administer the estate of the deceased and did secretly without her knowledge file the present succession cause using forged documents. That, the deceased was a resident of Mnagei location and not Keringet and that she (objector) did not sign the necessary succession papers nor did she consent to the administration of the deceased's estate by the applicant.

The objector contended that the applicant in collusion with the alleged chief of Keringet and the alleged brothers of the deceased have disinherited her and her daughter over the deceased's estate. That, she only learnt of this succession cause when she conducted a search at the Kitale land

registry. That, the transfer of the estate property to the applicant was illegal and ought to be cancelled.

The objector further contended that the actions by the applicant were fraudulent and calculated to defeat justice and deny her and her daughter inheritance of the estate of the deceased. A supplementary affidavit deponed by Francis Cheboton Ndiwa dated 15th February, 2013, was filed on behalf of the objector. It is therein averred that the deponent is a resident of Mnagei location West Pokot and knows the objector as the widow of the deceased. That, the deceased owned land parcel No. West Pokot/Keringet A/367 while the applicant owned parcel No. West Pokot/Keringet A/366.

That, the deceased married the objector and both lived peacefully in their material parcel of land. That, the two were blessed with children who passed away save one daughter, Grace Chelatamet.

Francis, went on to aver that he is conversant with the aforementioned facts because he was the area assistant chief from 1964 to 1986 and that he has been a neighbour to the deceased since his parcel of land No. West Pokot/Keringet A/370 borders that of the deceased. That, the current dispute arose after the death of the deceased when the applicant alleged that the objector could not inherit the estate of the deceased since she did

not bear sons with the deceased and the Pokot customs and traditions do not recognize girls and women in property inheritance. He (Francis) affirmed that the objector was a legal wife to the deceased and that the estate property parcel No. West Pokot/Keringet A/367 belonged to the deceased.

In his replying affidavit dated 23rd January, 2013, the applicant denies that the objector is the widow of the deceased and avers that the deceased was never married prior to his death. He (applicant) also avers that he has never threatened to evict the objector from the estate property and that according to the Pokot customs ceremonies such as “Kuyougu”. “Ipunolio Korka” and “Kitonolio Trim” are performed when a woman is getting married and herein, no such ceremonies were performed. That, the deceased never had any child with the objector as alleged and that the property in dispute was lawfully and regularly allocated to him (applicant) in the year 1959 by elders after which he took possession thereof and lived thereon without any interruption from anybody. That, in 1971, at the request of the deceased he sold to him part of the estate property for a consideration of ten cows and 13 sheep which were to be given later. That, he (applicant) caused the property to be sub-divided into two parts thereby creating parcel No. West Pokot/Keringet A/366 which was registered in his name and parcel No. West Pokot/Kringet “A”/367 in favour of the deceased but which was never taken possession of by the deceased nor was a title deed obtained in respect thereof by the deceased. That, upto the time of his death, the deceased did not provide the ten cows and

13 sheep for the property which the objector requested for permission to occupy and which permission was granted by the applicant for occupation of one acre of the property by the objector.

The applicant contended that the objector continues to occupy the one acre and that with the consent of family members, he has the right to administer the estate of the deceased and to continue holding the title to the material property whose occupation he has enjoyed from 1959.

A supplementary affidavit by **Dorah Sakwa Wakoli**, dated 24th January, 2014, was filed on 27th January, 2014 to support the applicant's contention that the estate property belongs to the applicant and that the objector was never a wife to the deceased as alleged.

A further supplementary affidavit dated 24th January, 2-14, deponed by a sister to the deceased, Aprong Kitok Ngiriamat, contains averments to the effect that the deceased purchased part of the applicant's land for a consideration of 10 cows and 13 sheep which was never paid to the applicant and that the deceased never married in his life time. That, the objector stayed with the assistant

chief Francis Chebokoi Ndiwa when the deceased was alive and that she (objector) never lived with the deceased as his wife.

The applicant deponed a further affidavit dated 24th January, 2014 affirming his acquisition and ownership of the estate property and contending that the land borders that of one Elijah Muhe and not Francis Chebon Ndiwa.

There is also a further affidavit deponed by the objector dated 15th February, 2013, in which she denies that the deceased purchased the estate property from the applicant and contends that it was not possible for the applicant to have given a stranger (i.e herself) part of the property for no apparent reason. She affirmed that she was married to the deceased and that all their children passed away except their daughter, Grace Chelatamei. She contended that the estate property was given to the deceased by his parents who in turn gave the applicant the parcel known as No. West Pokot/Keringet A.366. She further contended that she was the right person to file a succession cause respecting the estate of the deceased and not the applicant.

The issues arising for determination from the averments and contentions by both the objector and the applicant are firstly whether the objector was married to the deceased and therefore his widow. Secondly whether the applicant viz-a-vis the objector was entitled to apply for the grant of letters of administration respecting the estate of the deceased.

The answer to the first issue would invariably determined the second issue for reason that a widow would top the order of priority for those entitled to apply for the grant. A widow is the most important person as far as inheritance rights are concerned as she would be the person who needs the estate property most and is likely to use it in the best interest of deceased's heirs and dependants. Section 35 of the law of Succession Act guarantees such rights.

A third issue that may arise is whether the objector even if not a widow to the deceased was nevertheless his dependant so as to be entitled to a share of his estate. A determination on the first two issues would shade light as to whether the material grant was obtained by the applicant in a manner which was fraudulent or by concealment of material facts.

Under section 76 of the law of Succession Act, a grant obtained fraudulently and/or by concealment of material facts may be revoked or annulled at any time.

With regard to the first issue, there was nothing in the form of a marriage certificate establishing that the objector underwent a statutory marriage ceremony with the deceased. Neither was there anything in the form of oral or affidavit evidence pertaining to Pokot customary practices relating to marriages so that it may be deduced that the objector underwent a customary marriage with the deceased.

The applicant referred to customary practises known as “Kuyougu”, “Ipunotto Korka” and “Kitonotto trim” but didn't lead any evidence showing that there were actually not undertaken to seal the alleged marriage between the deceased and the objector. However, the letters dated 22nd April, 2010 and 26th October, 2012 from the Chief of Mnagei location Kapenguria Division West Pokot (i.e Annexures marked SCE 1 (c) and SCE

1 (a)] were a clear indication that most likely that not the objector was married to the deceased or that the two lived together as man and wife.

The letters also indicated that the deceased and the objector had a daughter Grace Chelatamei. Although in the death certificate used by the applicant to obtain the disputed grant it is shown that the deceased died on 9th April, 1984, the aforementioned letters indicated that the deceased died on 12th March, 1999 as confirmed by the later death certificate (annexture marked SCE 1(a)). The applicant did not substantially dispute the letters, neither did any of his witnesses even though they were very loud in stating that the objector was not married to the deceased.

Francis Cheboton Ndiwa, who between 1964 to 1986 was the chief of Mnagei location and a neighbour to the deceased confirmed that the objector was married to the deceased and that they had one living daughter Grace Chelatamet.

Suffice to say that on a balance of probabilities the objector has established that she is the deceased's widow and that she is the mother of his daughter Grace Chelatamet contrary to what has been stated by the applicant as supported by Aprong Kitok Ngiriamal and Dorah Sakwa Wakoli.

Interestingly, the applicant stated that he allowed the objector to occupy part of the estate property yet he “disowned” her as his (deceased's) wife. This was also a clear indication that there was indeed a marriage relationship between the deceased and the objector otherwise why would the applicant allow the objector to occupy the deceased's house and land?

It is therefore the finding of this court on the first issue for determination that the objector was married to the deceased and is therefore his widow. With that finding, it would follow that the objector in relation to the applicant was entitled in order of priority to apply for grant of letters of administration respecting the estate of the deceased.

In any event, as regards the third issue for determination, the objector would be entitled to benefit from the estate of the deceased as a dependant and so would her daughter Grace Chelatamet.

The fact that the applicant deliberately omitted the objector and her daughter from the administration and benefits of the estate of the deceased amounted to concealment of material facts and the fact that the applicant used a disputed death certificate and laid claim to the estate property amounted to nothing short of fraud.

Consequently, the present application is merited and is allowed to the extent that the grant issued to the applicant dated 23rd September, 2011 and confirmed on 24th May 2012, be and is hereby annulled and/revoked with orders that a fresh grant be applied for by the objector.

Since this was not a matter revolving on ownership of land, the objector may move the court accordingly for rectification of the land register with regard to the estate property i.e land parcel No. West Pokot/Keringet/367.

Ordered accordingly.

J. R. KARANJA,

JUDGE

(Read and signed this 25th day of February, 2014).