

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 1574 OF 1992

AND

IN THE MATTER OF MARY WANJIRU KURIA

DECEASED

RULING

1. The application dated 10th June 2013 seeks the annulment of the confirmation proceedings conducted on 8th March 2011 and related orders.
2. The grounds upon which the application is premised are that the proceedings to obtain the grant were defective in substance as it was not disclosed that one of the assets the subject of the proceedings was held in trust by the deceased for the applicant. It is also alleged that the administration of the estate has been done fraudulently. It is also alleged that the consents of the applicant and his children were not obtained to confirm the grant and that the confirmation was obtained fraudulently.
3. The applicant is the father of the respondent and a co-administrator with her of the estate of his deceased wife. The grant of letters of administration was made jointly to them on 20th January 1993.
4. Confirmation of the grant was obtained on an application dated 6th March 2009. The affidavit in support of the application was sworn on even date by both administrators, that is both the applicant and the respondent.
5. I note that the applicant alleges that the other beneficiaries did not consent to the confirmation application, yet the other beneficiaries have not sworn affidavits to that effect. He alleges that he never consented to the distribution, yet the confirmation application dated 6th March 2009 was supported by an affidavit sworn by the applicant herein jointly with his co-administrator, the respondent. He does not deny his signature in the affidavit sworn on 6th March 2009.
6. I have carefully scrutinized the signature purported to be of the applicant in the affidavit sworn on 6th March 2009 and compared it with that in the affidavits sworn on 10th June 2013 and 18th November 1992. All these signatures appear to be similar. I am mindful of fact that I am not an expert in handwriting, but I do note that the applicant has not renounced the signature in the affidavit of 6th March 2009.
7. Taking the above into mind, I find myself unable to accept the argument by the applicant that he never participated in the proceedings which culminated in the distribution of the estate and never consented to the distribution.
8. The applicant urges that Plot No. 47A Ongata Rongai (also known as No. 47B Ongata Rongai) is jointly owned. He has attached documents to his affidavit to support this assertion. The relevant document herein is the letter dated 2nd December 1982, a letter of transfer of Plot No. 47B Ongata Rongai to Simon Kuria and Ms. Mary Kuria. There is no indication in the letter that the property is held by the two as a joint tenancy or tenants in common.

9. There is also another letter dated 26th January 2001 transferring the same plot to Simon Kuria and Winnie Wairimu Kuria. The latter letter changes ownership of the plot from the previous owners, Mr. Simon Kuria and Ms. Mary Kuria, to the new owners, Mr. Simon Kuria and Ms. Winnie Kuria.
10. The two letters are from the Olkejuado County Council who are the custodians of the records of ownership of the said plot. If the records reflected the plot to have been owned jointly by Mr. Simon Kuria and Ms. Mary Kuria, then no doubt a transfer of the sort reflected in the letter of 26th January 2001 would not have occurred.
11. I find no merit in the application dated 10th June 2013. I hereby proceed to dismiss the same. This being a family matter, I will make no orders as to costs.

DATED, SIGNED and DELIVERED at NAIROBI this 25th DAY OF April, 2014.

W. MUSYOKA

JUDGE

No appearance for the applicants.

In the presence of Mr. Kimathi for Mr. Kiura advocate for the 2nd respondent.