



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

SUCCESSION CAUSE NO. 759 OF 2012

IN THE MATTER OF THE ESTATE OF THE LATE WANGAI MUGU MANYARA

PETER MBUGUA WANGAI.....PLAINTIFF/RESPONDENT

VERSUS

ESTER WANGUI WANGAI.....DEFENDANT/APPLICANT

RULING

By a Notice of Motion dated and filed on 9th November, 2012, the Applicant sought two prayers -

(a) *revocation of the grant made to the Respondent on 25.09.2008 in Naivasha Succession Cause No. 36 of 2008,*

(b) *pending determination of prayer (a) above, there be an interim injunction to restrain the Respondent from disposing, transferring, charging the parcel of land known as Nyandarua/South Kinangop/8542 being a sub-division of parcel No. Nyandarua/South Kinangop/840, whether by herself or through agents.*

2. An order of injunction was made and issued on 9.11.2012. The Application was ordered to be determined by way of written submissions. The Applicant's counsel's submissions were filed on 28.06.2013, while those of the Respondent's counsel were filed on 30th January 2014. In between the filing of the Application were several affidavits exchanged between the Applicant and the Respondent which did not alter the nature of the issues raised by the application namely -

- whether the Respondent being the wife of the deceased is absolutely entitled to all the properties set out in the Certificate of Confirmation of the Grant dated 25th September 2008;*
- whether the Respondent is entitled to deal with the estate as she pleases?*
- What is the share of the Applicant and the other children in the estate and subsequently can the Certificate of Confirmation of Grant be revoked and/or annulled?*

3. I will commence with the last issue – whether a Grant of Letters of Administration confirmed or otherwise may be revoked or annulled. Under Section 76 of the Law of Succession Act (*Cap. 160, Laws of Kenya*), a Grant may be revoked on any of the following grounds -

(a) *the proceedings to obtain the grant were defective,*

(b) *the grant was obtained fraudulently by making of a false statement or by the concealment from the court of something material to the case,*

(c) *that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently,*

(d) *that the person to whom the grant was made has failed, after due notice and without reasonable cause either -*

(i)

(ii) *to proceed diligently with the administration of the estate,*

(iii) *to produce to the court, within the time prescribed, any such inventory or account of administration as is required by the provisions of paragraph (e) and (g) of Section 83 or has produced such inventory or account which is false in any material particular, or*

(e) *that the grant has become useless and inoperative through subsequent circumstances.*

4. I note that the parties in this application are mother and son. I would have thought it *anathema* for family linen to be washed in the open. But be that as it may, I find no other ground disclosed in the application resembling any of the grounds under Section 76 of the Law of Succession Act (*supra*), except one, the Administrator has not proceeded diligently with the administration of the estate.

5. The Grant herein was confirmed on 20th September 2008 in Naivasha Senior Resident Magistrate's Cause No. 36 of 2008. The deceased's estate was vested in one Esther Wangui Wangai, the surviving widow of Wangai Mugu Manyara, (*deceased*).

6. The Respondent, contends that as the widow of the deceased she is entitled to her husband's estate absolutely. The widow is gravely mistaken. That is not the law. Under Section 35 of the Law of Succession Act, a surviving spouse is only entitled to -

(a) *the personal and household effects of the deceased absolutely, and*

(b) *a life interest in the whole residue of the net intestate (which determines if the widow remarries).*

7. "A life interest only entitles the surviving spouse to the use and utility of the property, the subject of the life interest - The surviving spouse holds the property during her life interest as a trustee and stands in a fiduciary position in relation to the property. The property does not pass to the surviving spouse absolutely" - (*William Musyoka, Law of Succession*).

8. Besides under Section 37 of the Act, the surviving spouse can only deal with the residue of the net intestate with the consent either of her co-trustees (*other Administrators*) or the consent of the children of full age, or with the consent of the court, and in respect of dealings with immovable property, with consent of the court.

9. The tenor of the Respondent's Affidavits is that as a widow she is entitled to the entire estate absolutely. As already observed, she is not. The Respondent has purportedly sold some parcels of land without the consent of the court. Such sales are contrary to law, as they were not sanctioned by the court as required by the Act.

10. Besides under Section 83(g) of the Act, the Respondent is required, within six months from the

date of confirmation of the grant, or such longer period as the court may allow, to complete the administration of the estate in respect of all matters other than a continuing trust, and to produce to the court a full and accurate account of the completed administration.

11. What the law (*Section 35(5)*) requires the Respondent to do is to distribute equally the net intestate estate of the deceased, and not what the Respondent thinks, what each of her children should get. The deceased's estate appears to have been quite substantial, 85 acres of land. The Applicant claims that each of the sons is entitled to ten (10) acres, and the daughters five (5) acres.

12. Though there is reason why the Grant should be annulled forthwith, (*as that would cause anguish in the family*), I direct the Respondent to distribute the deceased's net intestate within ninety (90) days of the date hereof, and file a report in court within that period of time. In default of distribution and filing of an inventory of such distribution, the Grant made under a Certificate of Confirmation dated 20th September 2008 shall stand revoked and annulled upon the expiration of that period calculated from the date hereof.

It is ordered.

Dated, signed and delivered at Nakuru this 27th day of May 2014

M. J. ANYARA EMUKULE

JUDGE