

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO.3519 OF 2003

IN THE MATTER OF THE ESTATE OF MARGARET WANJIRU RIBIRO (DECEASED)

HANNAH WANJIRA RIBIRO.....APPLICANT

VERSUS

PETER KAROBIA RIBIRO.....1ST RESPONDENT

MUNYWE RIBIRO MUNYWE.....2NDRESPONDENT

R U L I N G

Margaret Wanjiru Ribiro, the deceased to whose estate these proceedings relate died on 13th April 1998. Peter Karobia Ribiro and Munywe Ribiro Munywe, the sons of the deceased (the Respondents in this application), petitioned the court to be issued with a grant of letters administration intestate in respect of the estate of the deceased. In the petition, the Respondents listed a property, LR. No. Kiambaa/Ruaka/639 (the suit parcel of land) as an asset of the estate of the deceased. The grant was issued to them on 27th February 2004. The grant was confirmed on 10th November 2004. The certificate of confirmation of grant provided that the Respondents would inherit the suit parcel of land.

On 4th May 2012, Hannah Wanjira Ribiro, the Applicant herein, filed summons seeking to have the said grant that was issued and confirmed to the Respondents revoked on the grounds, *inter alia*, that the proceedings leading to the obtaining of the said grant was defective in substance having been obtained through the making of deliberate false and fraudulent statements which was intended to mislead the court and subvert the course of justice. In particular, the Applicant stated that the Respondents failed to disclose to the court that the suit parcel of land was not part of the estate of the deceased the same having been registered in the Applicant's name at the time the petition was filed. The Applicant further stated that the Respondents were aware that the suit parcel of land was subject to court proceedings between the Applicant and the deceased. The Applicant eventually won the case. The fact of the existence of these court cases was not brought to the attention of the court. The Applicant stated that she had not executed the consent that was filed when the petition was lodged in court authorizing the Respondents to petition the court to be issued with a grant of letters of administration intestate in respect of the estate of the deceased. The application is supported by the annexed affidavit of the Applicant.

The application is opposed. The 1st Respondent Peter Karobia Ribiro swore a replying affidavit in opposition to the application. He deponed that although the suit parcel of land was registered in the name of the Applicant, it was so registered fraudulently because in actual fact the suit parcel of land belonged to the deceased. The 1st Respondent gave a history of how it came to be that the Applicant was registered as the owner of the suit parcel of land. He explained that the Applicant, their sister, had herself registered as the owner of the suit parcel of land in place of their mother (deceased) when the estate of their late father by the name Ribiro Munywe was being distributed. He explained that the members of the family of the deceased had never accepted the assertion by the Applicant that she had legally obtained the transfer of the said parcel of land. He urged the court to dismiss the application with costs.

At the hearing of the application, this court heard oral submission made by Mr. Isindu for the Applicant and by Mr. Ngugi for the Respondents. Learned counsel basically reiterated the contents of the application together with the opposing affidavits filed therein. The issue for determination by this court is

whether the Applicant made a case for this court to revoke the grant of letters of administration that was issued to the Respondents. **Section 76** of the **Law of Succession Act** grants this court jurisdiction to revoke or annul a grant where it is established, *inter alia*, that the grant was obtained fraudulently by making of false statements or the Petitioner concealed from the court something that is material to the case. In the present application, the facts are more or less not in dispute. It is not disputed that the suit parcel of land, was at the material time the Respondents petitioned the court to be issued with letters of administration in respect of the estate of the deceased herein, registered in the name of the Applicant. The suit parcel of land is still registered in the name of the Applicant. It does not therefore, and did not therefore form part of the properties that comprised the estate of the deceased. While it is true that there has been dispute over the ownership of the suit parcel of land, the fact that such dispute existed does not absolve the Respondents from the responsibility of telling the truth to the court.

The Respondent failed to inform the court that the Applicant was registered as the owner of the suit parcel of land in 1982 after succession proceedings before the Kiambu's Chief Magistrate's Court. The Respondents failed to inform the court that the deceased had in fact challenged the Applicant's right to inherit the suit parcel of land. That challenge was considered by the court and was disallowed. The deceased filed an appeal. That appeal abated when the deceased died. For all intents and purposes, the suit parcel of land belongs to the Applicant. It was clear from the annexures to the affidavit sworn by the Applicant in support of the application that the Respondents have exhausted all legal avenues available to them in the pursuit of the claim over the suit parcel of land. The filing of this petition to yet lodge another claim over the suit parcel of land can only be described as being an abuse of the due process of the court. This court cannot countenance such conduct by a litigant.

In the present application therefore, this court holds that the Applicant established a case for this court to revoke the grant that was issued to the Respondents. It was evident to this court that the Respondents concealed from this court the fact that the suit parcel of land, which they sought to inherit in these succession proceedings, did not in actual fact belong to the estate of the deceased. It belonged to the Applicant. The grant issued and confirmed with the Respondents is therefore revoked in so far as it refers to LR. No. Kiambaa/Ruaka/639 as part of the estate of the deceased in these proceedings. For the avoidance of doubt, this court declares that the Applicant established that she is the owner of the suit parcel of land. The Applicant shall have the cost of these proceedings.

DATED AT NAIROBI THIS 26TH DAY OF JUNE, 2014

L. KIMARU

JUDGE