



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MILIMANI
FAMILY DIVISION
SUCCESSION CAUSE NO: 249 OF 1999
IN THE MATTER OF ESTATE OF NJOROGE MUGANE –DECEASED

RULING

1. Njoroge Mugane died on 16th July 1996. Representation to his estate was sought on 11th February 1999 by Patrick Mwaniki Njoroge in his capacity as son of the deceased. A grant of letter of administration intestate was made to him on 8th April 1999.
2. The said Patrick Mwaniki Njoroge swore an affidavit on 8th February 1999 in support of the petition for letters of administration of even date. He identified the survivors of the deceased as Gaterina Njura Njoroge, Grace Mwimbi Njoroge, Patrick Muriuki Njoroge, Nicasio Nyaga Njoroge and Silas Njiru Njoroge. The deceased was said to have had died possessed of Gaturi/Nembure/904, 8110 and Karingai Market Plot No. 9.
3. The administrator then moved the court on 29th September 2004 for confirmation of grant by an application dated 28th September 2004. What the matter came up on 14th December 2014, it was ordered that Nicasio Nyaga Njoroge be appointed co-administrator. The grant was confirmed on 10th May 2005. The estate was divided between Caterina Njura, Grace Mumbi, Patrick Mwaniki and Nicasio Nyaga Njoroge.
4. On 11th May 2012, Alexander Murage Njoroge filed the Summons for Revocation of Grant dated 8th May 2012, seeking revocation of the grant made on 10th May 2005. He argued that the process of obtaining grant was defective, there was fraud, reliance on false statements, concealment of information and misrepresentation. The applicant's main argument was that he was one of the children of the deceased, yet his name was not disclosed. He was not consulted when the petition was lodged in court, nor were citations ever issued to him. He mentioned that some assets were given to non-family members, such as Felister Thenda.
5. Patrick Mwaniki Njoroge swore an affidavit on 14th January 2013, and filed it in court on 15th January 2005, in reply to the application. He asserted that the applicant, Alexander Murage Njoroge, was not a child of the deceased and that was why he was excluded from benefit. He conceded that some property had been given to Felister Thenda, and explained that that was done on humanitarian grounds for the services rendered to the family by the former after she and her children were abandoned by the applicant at the deceased's homestead.
6. Directions were given on 16th January 2013 on the mode of disposal of the application. The parties were to give oral evidence.

7. The applicant obtained a date on 10th December 2013 for the hearing of the application on 20th January 2014. There is an affidavit of service filed in court on 13th January 2014 and sworn on 13th July 2014 by Samuel Kinyua Ndege. He averred to have had served notice of the hearing of the application on the Patrick Muiruki Njoroge, Felister Nthenya, Catherine Njura and the firm of Messers. Kinyori N.M. & Company, Advocates. The service was allegedly effected on 13th December 2013, 2nd January 2014 and 4th January 2014. Attached to the affidavit is a hearing notice dated 16th December 2013 with a rubber stamp mark of Kinyori N.M & Co. Advocates embossed on its face.

8. On 20th January 2014, the applicant attended court, but the other parties were absent. He gave sworn oral evidence. He testified that he was a son of the deceased and a brother of the two administrators. He stated that Caterina Njura and Grace Mwimbi were his stepmothers and that his mother was deceased and was called Ngai Njoroge. The latter only had two children, the applicant and a sister called Mutwiri. He averred that Felister Nthenda was his wife and complained that property was given to her instead of being given to him. He said his mother was the first wife of the deceased and he, the applicant, actually cared for all the children of the deceased, after their father was detained. He complained about being excluded from the list of survivors, of not being consulted and not being notified before the petition for grant was filed. He denied having abandoned Felister and her children.

9. From the record of the papers lodged with the petition, it is quite clear that the applicant was not listed as a survivor of the deceased, and indeed the first administrator in his affidavit in reply to the application acknowledged the said exclusion. The only issue for me to determine is whether the applicant was a child of the deceased or not.

10. The applicant did not place before the court any documents to connect him to the deceased. Neither did he call any witnesses who would have attested to the fact. I am left to work with his word against that of the respondent. The only matter that gives credence to the applicant's story is the person variously referred to Felister Nthenda, Felister Thenda, Felister Thenya and Felister Nthenya. In his affidavit in support of the application, the applicant described her a non-family member who benefited from the estate of the deceased, while in the reply the respondent says that she was provided for the services she has given to the family over many years after abandonment by the applicant at the deceased's homestead. In his oral evidence, the applicant identified her as his wife. The respondent did not explain the services that the woman rendered to the family and the circumstances in which she and the applicant came to be within the homestead of the deceased. It would appear to me that she was being provided for as a member of the family by dint of her having been a wife of the applicant, who was himself a member of the family of the deceased. She must have been closely related to the family for her to be given family land. I am therefore inclined to hold that the applicant was a child of the deceased.

11. Having so found, it follows that the non-disclosure of the applicant in the petition as a son of the deceased was fraudulent and amounted to concealment of important matter from the court and misrepresentation. It forms a good ground under **Section 76** of the Law of Succession Act for the revocation of the grant on record.

12. Although both sides talk about Felister Thenya having been given some property out of the estate I have no documentary evidence of it. The certificate of confirmation of grant dated 10th May 2005 makes no reference whatsoever of the said Felister Thenya.

13. The orders that I have been moved to make in the circumstances are :-

- a. That the grant of letters of administration intestate made on 14th December 2004 is hereby revoked;
- b. That the confirmation orders made on 10th May 2003 are hereby set aside and the certificate issued thereon on even date cancelled;
- c. That Alexander Murage Njoroge shall be included in the list of beneficiaries;
- d. That the parties shall thereafter move the court for appointment of administrators and for the subsequent confirmation of grant herein made to the new administrators; and

e. That the applicant is granted costs of the application.

DATED, SIGNED and DELIVERED at NAIROBI this 13th DAY OF June, 2014.

W. MUSYOKA

JUDGE

In the presence of Mrs. Kinyori advocate for the respondents.