



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO.180 OF 2011

SUCCESSION CASUE GATUNDU LAW COURTS NO. 26 OF 2007

IN THE MATTER OF THE ESTATE OF MWAURA WANGONYA (DECEASED)

MWAURA KAMAU HARUN.....OBJECTOR/APPLICANT

VERSUS

MARTHA WANGARE MWAURA.....RESPONDENT/PETITIONER

RULING

1. The deceased Mwaura Wagonya died on 11/2/12007 as per death certificate No. 960481. The Petitioner Martha Wangare Mwaura applied for Letters of Administration intestate in 2007 under Succession Cause No. 26/2007 in Gatundu Law Courts. The grant was made to her on 26/2/2009. The grant was confirmed on 2/10/2009.
2. On 1/2/2011, the objector son of the deceased filed summons for revocation of grant in the present Succession Cause and relied on the following grounds;
3. The Petitioner fraudulently and irregularly obtained the grant and confirmation of grant. He relied among other ground on the following evidence deponed in the supporting affidavit to the application/ summons of revocation of grant.
4. The Petitioner is not the wife of the deceased, the objector's father as she was not married under Kikuyu Customary Law and has not been able to provide any evidence to them, to prove this fact.
5. The Objector is the only son and child of the deceased by his late mother Priscillah Mwiwaki Mwaura who died in1996.
6. The Objector annexed to the summons for revocation of grant the following documents that the Petitioner/Respondent filed in Succession Cause 26/2007 Gatundu Law Court In applying for grant of letters of administration of the deceased's estate;
 - a. Petition for letters of administration "MKHI" where the Respondent petitioned in her capacity as wife of deceased.
 - b. Affidavit in support of the application "MKH2" which lists the summons of the deceased as;
 - a. "Martha Wangare Mwaura – Adult son
 - b. "Harun Kamau Mwaura - Adult Son"
 - c) A similar affidavit in response of the application "MKH 3" which listed the survivors as;
 - a. " Martha Wangare Mwaura – Wife".
- d) A letter from the Chief of 25/06/07 "MKH 4" that listed the

Dependants of Mwaura Wangonya – deceased as;

- a) Martha Wangare Mwaura –Wife
- b) Harun Kamau Mwaura – Son

e) Another similar letter ‘MKH 5’ Chief’s letter dated 16/6/2009. Now

listing the dependants of the deceased as ‘Martha Wangare Mwaura

Who has no children.’

7. The Objector gave testimony in open Court on 17/9/2014 and stated that he is the only Son and child of the deceased Mwaura Wangonya. The letters of administration were obtained by Martha Wangare who was not married by his father and she had no children of the deceased.

She petitioned for letters of administration in Gatundu Law Courts which Court later burnt down. The Petitioner sought reconstruction of the Court file and the same was granted and she obtained the confirmation of grant.

The documents lodged by the Petitioner were conflicting in the information preferred or contained. There are two (2) Affidavits in support of the Petition for letters of administration ‘MKH 2’ & ‘MKH 3’ which on the one hand list the Petitioners and Objector as survivors of the estate and on the other hand only the Petitioner as the survivor of the estate.

There are also two (2) letters of the Chief with similar conflicting information ‘MKH 4 & 5’. The information given to the Court in Gatundu in order to get the letters of Administration, was again conflicting; one with the Petitioner as widow and the other with Petitioner and Objector. This was not inadvertent but a deliberate scheme to deny him, the Objector the opportunity to inherit from the father’s estate.

8. The Respondent/Petitioner Martha Wangare Mwaura filed the replying affidavit on 4/7/2011 and deposed that she was married by the deceased under Kikuyu Customary Law the deceased had two (2) households the Objector’s and his late mother and hers with no children.

She applied for letters of administrator intestate for the deceased’s estate on 11/7/2007 so as to share in the half of the deceased’s estate as the deceased had transferred half share to the Applicant’s names during his life. She produced the deceased’s burial program and photograph to confirm she is the 2nd wife of the deceased; It was unmarked and the burial program was not translated in English. The Respondent also informed that the Court through her Lawyer Mr. Njiraini that the Objector was allocated land prior to the deceased’s death and produced the green card, mutation form and minutes of meeting held to divide the land No. 20/ Chania Kanyoni into 2 ½ acres for the Objector and 2.3 acres for the deceased.

9. The Court has carefully considered the issue before Court for determination. The issue is whether the application and grant of letters of administration and confirmation of grant obtained under Succession Cause 26 of 2007 was valid and legal.

10. This case is satisfied from the evidence on record especially the duplicate affidavits and Chief’s letters with contradicting information presented before Gatundu Law Court, the grant and confirmation of grant by the Gatundu Law Courts was not valid and legal as the Court was furnished with incorrect and contradicting information. The 1st affidavit had the Petitioner and Objector as the survivors of the deceased, the file was burnt under the fire that gutted the Gatundu Law Courts. When the file was reconstructed, the new affidavit had only one (1) survivor of the deceased the Petitioner. She concealed the existence of the Son of the deceased, the Objector and obtained the letters of administrator without consent of the Objector.

Similarly, the Chief's letters, one had the dependants as the Petitioner and Objector and the other had only the Petitioner. Clearly, the Petitioner misled the Court and did not disclose the existence of the Objector and obtain the statutory consent to obtain letters of administration.

11. The Respondent alluded to the division of property during the deceased life to the Objector which he conceded. However, to obtain letters of administration for the deceased, legally the Petitioner ought to disclose all survivors and obtain relevant consents to administer deceased's estate. It is at this point of the distribution of the estate that the parties and the Court if parties do not agree may consider the gifts by the deceased given during his life time.

The fact of having given a gift during the deceased's lifetime is not a legal basis for not disclosing all the survivors of the deceased. The grant of letters of administrator is not for distribution of the estate but to collect and gather the deceased's assets and liabilities under 83 of the Law of Succession Act Cap 160.

12. The confirmation of grant of 2/10/2009 is also irregular and illegal as it is based on grant by the Court based on material undisclosed facts by the confirmed grant is annulled.

13. This Courts assessment of the evidence on record and the various attachments show that the Respondent/Petitioner is a wife of the deceased, evidenced by the burial program of the deceased, attached and the Objector, the Son of the deceased admittedly by both parties. Therefore this Court finds the deceased had two (2) families the 1st wife now deceased represented by the Objector and the 2nd one represented by the Respondent and no child of the marriage.

14. Consequently the property of the deceased

Chania Kanyoni/2413 and

Chania Kanyoni/2407 is to be administered by both families.

15. The upshot of the proceedings is that the summons of revocation of grant filed on 1/2/2011 is upheld and the confirmation of grant and grant of Objector's of administration revoked and annulled

16. The grant of letters of administration was on the basis of Section 76(b) (c) Law of Succession Act; concealment from Court of something material to the case and obtained by means of untrue allegation of a fact essential in point that the deceased had more than one (1) survivor and the consent of the Objector was legally required to obtain letters of administrator of the estate of the deceased.

17. The Petitioner and Objector are members of two (2) families of the deceased and shall obtain letters of administrator jointly or one with the consent of the other with regard to the administration of the deceased estate under Section 66 of Succession Act.

18. It is upon seeking the confirmation of grant that they shall propose the mode of distribution of the estate of the deceased to the Court and if not in agreement shall canvass and ventilate the issues for determination by the Court.

19. No. orders as to costs

Read and signed at Nairobi on this 31st Day of October, 2014 in open Court in the absence of the parties and Counsel.

M. MUIGAI

JUDGE