



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
PROBATE AND ADMINISTRATION DIVISION
MISC. APPLICATION NO.627 OF 2006

JUDY NJERI MUTUGI.....APPLICANT

-VERSUS-

EVANSON GITAU.....1ST RESPONDENT

JOHN NG'ANG'A.....2ND RESPONDENT

RACHAEL NJENG'A.....3RD RESPONDENT

RULING

1. This Summons for revocation of grant is dated 24th May 2006. It is supported by the affidavit of Judy Njeri Mutugi sworn on 24th May 2006. In the said supporting affidavit the applicant depones that the Grant of Letters of Administration Intestate which was made out to John Ng'ang'a, Racheal Mwihaki and Evanson Gitau respectively, on 11th May 2006 by Chief Magistrate's court at Thika in Succession Cause No. 111 of 2006 was obtained fraudulently by making of false statements and/or non-disclosure of material facts.
2. The material facts are set out in paragraph 8 of the supporting affidavit by the Applicant as follows:
 - i. That she was legally married under Kikuyu Customary Law to the deceased at the time of his death;
 - ii. That she was the sole dependant to the estate of the deceased;
 - iii. That she had a prior right to the Grant of Representation to the estate of the deceased as compared to the aforesaid persons;
 - iv. That she did not renounce her right to apply for the Grant of Representation, and
 - v. That she was not included as a beneficiary to the estate of the deceased.
3. In the supporting affidavit the applicant avers that sometimes in 1999 she contracted a marriage under the Kikuyu Customary Law with Ben Kinyanjui Muya now deceased. That thereafter they

- cohabited in a matrimonial home at Kinoo until his demise. That at the time of death the applicant was his sole wife and dependant and therefore had prior right to apply for a Grant of Representation as compared to the persons named in paragraph 1 above, which right she had not renounced.
4. The applicant further avers that the aforementioned persons are brothers and sisters of the deceased who were not being maintained by him prior to his death and did not therefore qualify to be dependants of the estate. She set out their occupations and marital status in paragraph 6 of the supporting affidavit. It is her averment that it was irregular for the Respondents to petition for Letters of Administration Intestate from the Chief Magistrate's Court in Thika District since the deceased was domiciled in Kiambu District. Further that at the time of granting the said Letters of Administration she had already filed her petition in the High Court in Nairobi.
 5. Two witnesses Fred Gitau Muya and Lucy Wanjiru Karanja filed affidavits sworn on 1st April 2014 stating that they were the eldest brother and the older sister of the deceased respectively. They both deponed that the deceased had introduced the Applicant to them as his wife while he was alive and they separately visited them in their home at Kinoo.
 6. Fred Gitau Muya further deponed that he too did not perform any customary ceremony when he married his wife in 1962 and later solemnized the marriage in 1982. That he attended the funeral of the Applicant's sister in August 2003 together with his brother the deceased and was accompanied by two sisters-in-law and a daughter-in-law. That in 2002 the Applicant too had attended the funeral of their mother on behalf of the deceased who was away in Uganda on work related matters.
 7. In addition, Lucy Wanjiru Karanja deponed that it was the Applicant who was living with the deceased when he fell ill, who took him to Thogoto Hospital at Kikuyu and remained by his bedside with the deponent until the deceased passed on. That, funeral committee meetings were held in the house which the deceased shared with the Applicant in her presence and family members from both sides attended.
 8. The applicant states that it would therefore, be in the interest of justice for the said Grant of Representation which has not been confirmed, to be revoked. She is apprehensive that if the grant is not revoked the aforesaid persons would access and utilize the funds and other properties of the estate to her detriment.
 9. In the replying affidavit sworn by John Ng'ang'a Gitau one of the Respondent/Petitioners, in his own behalf and on behalf of the two other Petitioners on 19th October 2006, he stated that he and the other Petitioners were brothers and sister to the deceased respectively. He set out the names and ages of the other surviving brothers and sisters of the deceased and averred that the Grant of Representation was obtained legally, devoid of any fraud, concealment, or misrepresentation.
 10. The Respondent denied that the Applicant was married to the deceased under Kikuyu Customary Law as the deceased never formally visited her home nor did any of his family members do so. Further that no formal ceremony was ever conducted to celebrate the said marriage and to the best of his knowledge the deceased was not married at the time of his death.
 11. The Respondent/Petitioner admits that the deceased had a house in Uthiru but it was not a matrimonial home. That the persons mentioned in paragraph 6 of the supporting affidavit are brothers and sisters of the deceased and were entitled to his estate, their status in society notwithstanding. That notice did issue from the High Court at Nairobi to notify them that no other petition had been filed to the estate of the deceased. For the foregoing reasons, there is no basis, in his view, to revoke the grant as the Applicant has no right whatsoever to the estate and stands to lose nothing.
 12. It is his averment that the Applicant had no right to a grant in the deceased's estate as she was not

- married to him and that, in fact, the deceased had indicated his sister Rachael Njenga as his Next of Kin in his SACCO documents annexed to the affidavit. That not being a dependant to the deceased, she had no priority over other rights to the deceased's estate and was also not included in the list of beneficiaries to the estate.
13. Annexed to the replying affidavit was a copy of a letter from the Chief Executive Afya Co-Operative Savings and Credit Society, confirming that the deceased had nominated his sister Rachael Njenga of Box No. 29090 Nairobi as his Next of Kin. A copy of a letter dated 24th February 2006 from the Chief of Kinoo in whose location the deceased was domiciled before his death, set out the nine brothers and sisters as the people who survived him and did not mention a spouse.
 14. To support the Respondents three witnesses Samuel Mbuti Thaiya, Andrew Kamunyu Kamuria and Godfrey Ng'ang'a Gachuri filed affidavit evidence all sworn on 31st March 2009. The three deponents averred that they hail from Uthiru village where the deceased was born and raised and hence knew both his parents and the deceased very well. Further that to the best of their knowledge the deceased did not inform them of any formal marriage ceremony, something he would have done if indeed there was such a ceremony because, they together with the village elders were always participants and witnesses to such ceremonies in the deceased's family.
 15. There is no doubt that Ben Kinyanjui Muya died on 18th September 2005 as evinced by a copy of Death Certificate No.943222 and burial permit No.314205. The issue for determination is whether or not the applicant herein was a wife to the deceased and therefore holds the prior right to apply for Grant of Representation as compared to the Respondents.
 16. The annexures on record include a letter dated 9th June 2006 from the office of the Chief Kinoo location which acknowledged the Applicant as the only wife of the deceased and went on to state that the said letter superseded all other letters issued before them from the said office, on the matter of the estate of Ben Kinyanjui Muya. This letter which was the result of a series of meetings between the chief and members of the deceased's family, therefore superseded the earlier letter dated 24th February 2006.
 17. Annexed to the affidavit was pg No. 45 which carried the Daily Nation Newspapers of 22nd September 2005. The said obituary included the name of the Applicant as the wife of the deceased.
 18. Dr. Adriel Raymond Njogu a retired Animal Health Consultant at Tripanosomiasis Research Institute (KETRI) Muguga and Dr. Joseph Maina Ngotho a veterinary doctor attached to National Museums of Kenya in the Institute of Primate Research, both swore affidavits dated 3rd April 2009. Dr. Adriel averred that he knew the deceased in his youth when he resided with his eldest brother Fred Gitau Muya, who was Dr. Adriel's colleague in Tororo Uganda. That after retirement and through normal visits to the deceased's brothers home he met the deceased and the Petitioner and they presented themselves as husband and wife. Dr. Ngotho on the other hand, averred that the deceased worked under him as a Technician in his previous place of work at KETRI and he was certain that the deceased and the Petitioner lived together as a couple from 2000.
 19. From the foregoing averments I am persuaded that the Petitioner has proved on a balance of probabilities that indeed at the time of his demise, the deceased, Ben Kinyanjui Muya and the Petitioner were living together and presenting themselves for all purposes and intent as husband and wife. In the premise she had a prior right to apply for Grant of Representation as compared to the Respondents. It would therefore be in the interest of justice for the Grant of Representation for the estate of the deceased issued to the Respondents herein to be revoked.
 20. Reasons wherefore I make the following orders:

1. That the Grant of Letters of Administration Intestate made to John Ng'ang'a, Rachael Mwihaki Njenga and Evanson Gitau by Chief Magistrate's Court, Thika on 11th May 2006 in Succession Cause No. 111 of 2006 be and is hereby revoked.
2. That the Beneficiaries do appoint Administrators to the Estate of the deceased afresh within 30 days of this ruling, failing which the court shall appoint from among the list of beneficiaries.

It is so ordered.

SIGNED DATED and DELIVERED in open court this 26th day of November 2014.

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L. A. ACHODE

JUDGE