



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MILIMANI AT NAIROBI
FAMILY DIVISION
SUCCESSION CAUSE NO.1632 OF 2011

IN THE ESTATE OF JEREMIAH NGAMAU NATARI NJUGUNA (DECEASED)

VERONICA WAHU NJIRIRI.....OBJECTOR/APPLICANT

VERSUS

VERONICA WAIRIMU NGAMAU)

EDWARD NDEGWA NGAMAU)

SIMON NJOROGE MUGO)

PETER KABUCHO NGAMAU.....PETITIONERS/RESPONDENTS

RULING

- 1.** The objector, Veronica Wahu Njiriri, filed in this Court on 5.8.2011 a summons dated 22.7.2011 for revocation of Grant and named as respondents Messrs Veronica Wairimu Ngamau, Edward Ndegwa Ngamau, Simon Njoroge Mugo and Peter Kabucho Ngamau.
- 2.** The Grant sought to be revoked was issued to Messrs Veronica Wairimu Ngamau and Edward Ndegwa Ngamau in Kiambu C.M. Court Cause No.292 of 2009 relating to the Estate of Jeremiah Ngamau Natari Njuguna who died intestate at Kijabe Hospital on 18th October 2006 domiciled in Kenya.
- 3.** The Grant issued to the two administrators was confirmed on 14th April 2011 and the Estate of the deceased was distributed as reflected in the Certificate of Confirmation of the Grant issued in the said Cause and dated 15th April 2011.
- 4.** The Objector/Applicant sought in the summons dated 22.7.2011 revocation of the order distributing the plot of land known as Githunguri/Githunguri/T.139 to Simon Njoroge Mugo and for an order inhibiting “all further actions” involving the said plot.”

5. The applicant also sought a declaration that the alienation of the said plot was illegal and prayed for an order for the plot not to be transferred to him pending the determination of the application, the subject of this decision.

6. In the affidavit sworn by the applicant on 22.7.2011 in support of the application, the applicant avers that:-

- i. ***The applicant is the wife of Peter Kabucho Nyamau who was the first born son of the deceased (Jeremiah Ngamau Natari Njuguna)***
- ii. ***The applicant has six children with Peter Kabucho Ngamau and has used Plot No.Githunguri/Githunguri/T.139 in the past to generate income to sustain her children as she is now estranged from her husband, Peter Kabucho Ngamau.***
- iii. ***There has been bad blood between the applicant and her estranged husband on the one hand and the applicant and Simon Njoroge Mugo (whom the applicant has warned not to interfere with the said plot No.T.139) on the other part. The said Simon Njoroge Mugo claims to have purchased the said plot from the respondents.***

7. Simon Njoroge Mugo who is named as the 3rd respondent swore an affidavit on 2nd November 2011 in reply to the application in which he averred that he purchased plot No.T.139 and that the administrators and the beneficiaries of the estate of the deceased were all in agreement that the plot be transferred to him (Simon Njoroge Mugo).

8. Simon Njoroge Mugo further averred in his affidavit that the said plot No.T.139 has effectively been transferred to him and that he now holds a Title Deed for the same which was issued in his name on 26th August 2011. He avers that he was unaware of any dispute relating to the ownership of the plot, an averment that is clearly untrue having regard, inter alia, to the history of this matter and the averments made by the administrators of the Estate.

9. In his affidavit sworn on 2nd November 2011, Edward Ndegwa Ngamau, the 2nd respondent and one of the administrators of the estate avers that Peter Kabucho Ngamau sold plot No.T.139 to Simon Njoroge Mugo with the consent of the administrators of the estate and the other beneficiaries as that was his legacy.

10. Edward Ndegwa Ngamau also avers in his affidavit that the applicant was not cultivating the said plot as it was leased and further that the estate of the deceased has been distributed and finalized and beneficiaries now have their title deeds to parcels of land allocated to them.

11. The objector contends that she is entitled to plot No.T.139 by dint of her being the wife of Peter Kabucho Ngamau who was entitled to it as his inheritance.

12. The respondents contend in their submissions that the applicant's application has no merit because there are no proper grounds shown for revoking the confirmed Grant. It is the contention of the respondents that as long as Peter Kabucho Ngamau is alive, he remained the heir to the Estate of his late father and that his wife, the applicant, cannot claim to be entitled to inherit the estate of the deceased who was her father-in-law.

13. I have perused the application and the affidavits filed by the parties as well as the written submissions. Parties through their counsel on record consented to the application being determined on the basis of affidavit evidence and written submissions.

14. The issue for determination is whether the applicant is entitled to inherit the plot No Githunguri/Githunguri/T.139 forming part of the Estate of the deceased and whether she has *locus standi* to enable her to mount an application for revocation of the Grant.

15. Jeremiah Ngamau Natari, the deceased, died intestate domiciled in Kenya. He was survived by the respondents save Simon Njoroge Mugo, the 3rd respondent, who was a buyer and whose name should not have been included or featured in the list of heirs.

16. Under Part IV of the Law of Succession Act, and specifically Sections 38 and 41 thereof, a daughter-in-law or a son-in-law of a deceased person is not entitled to inherit the Estate of the father-in-law or mother-in-law if the deceased's son or daughter is alive. It is the deceased's son or daughter who is entitled to inherit and not the spouse of such son or daughter.

17. In the instant case, the applicant's husband who is the son of the deceased is alive. It is he and his siblings who are entitled to inherit the estate of their father. The applicant has no legal right to do so. If her husband had died, his share from in the estate of the deceased would have devolved upon his (and the applicant's) children. In the light of these facts it is clear that the applicant lacks capacity to interfere with the distribution of the estate of the deceased.

18. Under Section 76 of the Law of Succession Act, a Grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by any interested party or of its own motion that any of the matters stipulated in Section 76(a) to (e) are proved to its satisfaction. There is no proof that the succession proceedings were defective in substance; that the grant was obtained fraudulently; that there were untrue allegations of fact in obtaining the grant; or that there was failure by the administrators to administer the estate.

19. There is no dispute that the estate has been distributed and the parcels of land transferred to the heirs save that plot No.Githunguri/Githunguri/T.139 was transferred to a stranger, Simon Njoroge Mugo who was not entitled to be included in the list of the heirs or in the application for the Grant or in the certificate of the confirmation of the Grant. The alleged sale of the said plot by the applicant's husband, Mr. Peter Kabucho Ngamau and/or by the administrators was null and void not least because while the applicant's husband, Peter Kibuchi Ngamau, had no legal interest in the plot which he could transfer, the said plot could only be legally transferred by way of sale by the administrators of the Estate of the deceased with the sanction of the Court.

20. As it turned out, the transfer to Simon Njoroge Mugo was through transmission in the succession cause. That transmission was in violation of the law. An heir is not entitled to substitute the name of a buyer for his own name. The provisions of the Law of Succession Act require that an estate of person dying intestate be transmitted to his heirs as stipulated in the Act. The Laws of Succession Act does not permit strangers to be registered at the succession stage as the successors in title to the deceased. Only legitimate heirs of the deceased's estate are entitled to be registered.

21. It is clear that the name of Simon Njoroge Mugo in the succession proceedings as a person who was entitled to inherit the deceased's estate, was wrongful. He was not described as a buyer from Peter Kabucho Ngamau. The replacement of the name of Peter Kabucho Ngamau with the name of Simon Njoroge Mugo told a lie and the certificate of confirmation of the grant that ensued carried the error. Ideally the name of Peter Kabucho Ngamau should have been the one appearing in the proceedings and if after issuance of tiles the later desired to sell, he should have complied with the law and executed transfer instruments and paid duty and other charges attendant to sale and transfer so as to confer title to the buyer.

22. Of my own volition and so as to protect the integrity of the process of intestate succession under Part V of the Laws of Succession Act, Cap 160, it is my finding that the certificate of confirmation of the Grant dated 15th April 2011 issued in Succession Cause No.292 of 2009 in the Chief Magistrate's Court at Kiambu in the Estate of Jeremiah Ngamau Natari Njuguna offends the provisions of the Act to the extent to which it includes the name of Simon Njoroge Mugo as an heir in relation to Plot No.Githunguri/Githunguri/T.139 when the said Simon Njoroge Mugo was not related to the deceased or his creditor. Simon Njoroge Mugo is shown in the application and in the replying affidavits to have been a buyer from Peter Kabucho Ngamau.

23. Pursuant to Section 74 of the Law of Succession Act and Rules 43(1) 44(1) and 73 of the Probate and Administration Rules, I order that the confirmed grant shall be rectified by deleting the name of Simon Njoroge Mugo appearing against plot No.Githunguri/Githunguri/T.139 and by inserting in its stead the name of Peter Kabucho Ngamau, the son of the deceased.

24.The title deed for Githunguri/Gathangari/T.139 shall be surrendered to court within 14 days of the date hereof.

25. The entry made on 24.8.2011 in the land register reflecting the name of Simon Njoroge Mugo shall be cancelled and the name of Peter Kabuchi Ngamau shall be inserted instead. The entry made on 26.8.2011 relating to issuance of the title deed shall also be cancelled and a new title deed shall be issued in the name of Peter Kibuchi Ngamau which shall not be released before receipt by the Registrar of the cancelled title deed in the name of Simon Njoroge Mugo.

26. The application is hereby disposed on the basis of these orders. There shall be no order as to costs.

G.B.M. KARIUKI, SC

JUDGE

Delivered at Milimani Law Courts, Nairobi, on this 19th day of December 2014 by the Honourable Justice W. Musyoka on behalf of Justice G.B.M. Kariuki.

JUDGE

COUNSEL APPEARING

Mr. J. K. Njuguna advocate, of Kiarie Njuguna & Co. Advocates for the respondents Mr. D. Osoro for Mr. J. Nyakiangana advocate, of Julius Nyakiangana & Co. Advocates for the applicant

Court clerk – Mr. Wahinya Kugwa

