



REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Succession Cause 1228 of 2006

IN THE MATTER OF THE ESTATE OF SAMUEL KINYANJUI WAIGANJO

RULING

Monica Murugi Mungai moved the court on 13th December 2012 by an application by way of Chamber Summons of even date premised on Section 47 of the Law of Succession Act and Rule 73 of the Probate and Administration Rules. She sought several orders namely:-

(a) restraining orders against the administrator of the estate of the deceased, James Mungai Kinyanjui, with respect to property Dagoretti/Kinoo/2465 and 595;

(b) prohibitory orders against the Land Registrar, Naivasha with respect to Naivasha/Mwichiringiri Block 4/709;

(c) restraining orders against the Land Registrar, Naivasha, with respect to the subdivision of Naivasha/ Mwichiringiri Block 4/709.

(d) an order commanding the Land Registrar, Naivasha to issue the applicant with the Green card and the transfer form transferring Naivasha/Mwichiringiri Block 4/709 to Samson Wachira Maina forthwith;

(e) an order canceling the transfer of Naivasha/Mwichiringiri Block 4/709 to Samson Wachira Maina and a further order that the register be rectified to reinstate the name of the deceased Samuel Kinyanjui as the registered proprietor.

(j) an order removing the administration of the estate and substituting him with Monica Murugi Mungai.

In her affidavit in support of the application, Monica Murugi Mungai deposes that she is a daughter of the deceased and has the authority of his brothers and sisters, namely Arthur Gichuru, Reginald Ngugi Kinyanjui, Grace Rosebell Wanjiru and Gladys Wambui Mburu to make the affidavit. She has not attached any document to her affidavit as proof of such authority and it is therefore not clear whether this application is her own personal crusade or whether she does have the support of her other siblings who are unhappy with the manner in which the estate is being handled.

She says that her parents died in 1999. Representation to the estate of her father, the subject of these proceedings was granted to her elder brothers, J. Brown Njenga Kinyanjui and James Muigai Kinyanjui. J. Brown Njenga Kinyanjui has died leaving James Muigai Kinyanjui as the sole administrator of the estate. The grant was subsequently confirmed, but according to Monica, the process was unsatisfactorily and that is why she and her siblings decided to have the grant made to James Muigai

revoked. They then filed the Summons for Revocation dated 15th October 2007 which pends to date. The court made preservative order for the maintenance of *status quo*. She says that these preservative orders are not being obeyed as the estate land is being subdivided and sold by the administrator. The proceeds of the said sale is being shared out among only a section of the family. That a section of the family, including the applicant, has sat and agreed on a fresh mode of distribution, but the administrator has not signed the resulting consent together with another of the sons of the deceased. The applicant and the others also filed an application for an account by the administrator, the application is still pending.

The application was served on the respondents through their advocate who are on record for them. There is an affidavit of service filed in court on 18th January 2013 returning service. The respondents did not file replies to the application. At the hearing on 21st January 2013, Mr. Njogu appeared for one set of the respondents, but, did not participate in the proceedings as he said he had no instructions on the application. There was no appearance by Messrs. J.M. Waiganjo & Co. Advocates, who are on record for the other set of respondents.

The person whose estate these proceedings relate to, Samuel Njuguna Waiganjo, died on 13th May 1999. He was survived by his widow, Eunice Waithira Kinyanjui, who died later that year. There were ten (10) surviving children, six (6) sons and four (4) daughters. Three (3) of the daughters are married. The children are:

(a) John Brown Njenga Kinyanjui

(b) James Muigai Kinyanjui

(c) Charles Ng'ang'a Kinyanjui

(d) Richard Kungu Kinyanjui

(e) Arthur Gichuru Kinyanjui

(f) Reginald Ngugi Kinyanjui

(g) Peris Njambi Kinyanjui

(k) Monica Murugi Mungai

(l) Gladys Wambui Mburu

(j) Grace Wanjiru Njenga

Among the daughters, it is Peris Njambi Kinyanjui who is unmarried.

Representation to the estate of the deceased was sought by the first two elder sons – John Brown Njenga Kinyanjui and James Muigai Kinyanjui, in a petition for letters of administration intestate filed in court on 6th June 2006. In the affidavit in support of the petition all ten (10) children are listed as surviving the deceased. The property listed as making up the estate include:

(a) Dagoretti/Kinoo/595

(b) Dagoretti/Kinoo/2465-078 ha

(c) Naivasha/Mwihiringiri Block 4/709-1.198 ha

(d) 444 ordinary shares – ICDC

(e) 600 ordinary shares – Kenyan Commercial Bank

- (f) 359 ordinary shares – East Africa Breweries Ltd.
- (g) 1166 ordinary shares – Barclays Bank of Kenya
- (h) Savings A/C No: 100-123-601 – KCB Kikuyu Branch
- (I) Account No: KNAD – 6160 – Kenya Post Office.

The grant of letters of administration intestate was made to J. Brown Njenga Kinyanjui and James Muigai Kinyanjui on 28th August 2006.

Sometime in April or May 2007, the administrators of the estate filed a summons for revocation of grant dated 16th April 2007. In the said summons, all the ten (10) children were once again identified as surviving the deceased. However, when it came to the sharing of the assets the property was distributed between the five sons (5) and the one (1) unmarried daughter of the deceased. The three (3) married daughters were left out. The said summons was supported by among other documents, a consent to the mode of distribution of the estate, signed by all of the children of the deceased who were not administrator except Grace Wanjiru Njung'e. There is also a consent in Form 37 signed by all the surviving children who are not administrators, except for Grace Wanjiru Njung'e. The confirmation application was allowed on 9th July 2007 and a certificate of confirmation of grant was issued on the same day.

On 18th October 2007, a summons for revocation of grant was taken out by one of the beneficiaries, Arthur Gichuru Kinyanjui with the support of Reginald Ngugi Kinyanjui, Peris Njambi Kinyanjui, Grace Wanjiru, Monica Murugi and Gladys Wambui. In his affidavit in support of the applications he raised several issues or grounds for revocation of grant namely:-

(a) that the distribution in the certificate of confirmation was not equitable as some beneficiaries benefited more than the others;

(b) that the three married daughters were not provided for at all in the distribution;

(c) that he and the co-applicants did not agree on the mode of the distribution of the estate;

(d) that the deceased had expressed his wishes on distribution, and although the document did not satisfy the requirements of a written will, those wishes should have been followed.

It is not clear whether the administrators filed a reply to this application.

The application was placed before the judge on 23rd October 2007, and on 20th November 2007 the parties by consent agreed that the estate be preserved by the administrators until further orders. This consent was entered into by counsel for both parties. Thereafter, efforts were made to settle the matter amicably out of court. On 3rd December 2008 it was ordered that each of the parties file and serve accounts and a proposal on distribution. Parties were to meet by 30th January 2009 discuss the accounts and distribution. Arthur Gichuru Kinyanjui swore an affidavit on 30th December 2008, filed in court on 9th February 2009, on his own behalf and on behalf of Reginald Ngugi, Peris Njambi, Grace Wanjiru, Monica Murugi and Gladys Wambui. He gave accounts of Grace Wanjiru, Monica Murugi, Gladys Wambui, Peris Njambi, Richard Kungu and Reginald Ngugi. He did not deal with distribution. The administrator, James Mungai Kinyanjui, swore his own affidavit on 28th April 2009. In this affidavit he came up with a proposed mode of distribution which catered for the three (3) married daughters who had been left out at confirmation. He explained that the proposal in this affidavit of 28th April 2009 reflected how the deceased wished the estate to be distributed. He also said that some property had been transferred to his name and that of this co-administrator so that it could later be transferred to the rightful beneficiaries.

While this was going on, Arthur Gichuru Kinyanjui, filed another application dated 11th February 2009,

founded on **Section 76** of the Law of Succession Act and Rules 49 and 73 of the Probate and Administration Rules on the property that had be recently registered in the joint names of the administrators. The applicant complained that the said property was likely to be alienated by the administrators to the detriment of the other children of the deceased. He sought preservation of the estate. Orders were made by the court on 24th February 2009 as to the preservation of certain assets and allowing James Muigai Kinyanjui to operate as a sole administrator. Thereafter parties were to negotiate and agree on distribution, or upon failure to submit there on. It would appear that the negotiations and distribution failed paving way for the application dated 13th December 2012, which is the subject of this ruling.

What emerges from the above is a lack of trust, which has pitted the administrators against the other children of the deceased. The administrator is alone on one side while the other eight children are on the other side. The multiple applications filed in this matter by the other children, and which are still pending, clearly bring this out.

An administrator holds a position of trust. It is a position that should inspire confidence. A person who holds the position of administrator of an estate and who has lost the trust of the beneficiaries is not entitled to continue holding the position. James Muigai Kinyanjui does not enjoy the trust of his brothers and sisters and I do not believe that he is entitled to hold the office of the administrator of the estate of their deceased father.

Rule 73 of the Probate and Administration Rules saves this court's inherent power to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of court. It is clear that a majority of the surviving children of the deceased are not satisfied with the administration of the estate by James Muigai. The several applications on record clearly obstruct the administrator and this must be vexing everyone. Justice requires that this should be brought to an end.

Under Section 76 of the Law of Succession Act, I have power on my own motion to revoke a grant. The issues raised in the pending applications point to a lack of diligence on the part of the administrator in the administration of the estate. It has emerged clearly that although the administrator had consented to preserve the estate pending the hearing of the revocation application he has ignored the order and has proceeded to subdivide some of the properties and generally to disturb the status quo. There is sufficient basis for revoking the grant made on 24th February 2009 and I hereby revoke the same. All acts or doings or transactions effected on the strength of this grant are declared null and void. The certificate of confirmation of grant dated 9th July 2007 is also cancelled. The surviving children of the deceased are at liberty to move the court for appointment of new administrators. James Mungai Kinyanjui shall pay the costs of this application.

W.M. MUSYOKA
JUDGE

DATED, SIGNED and DELIVERED at NAIROBI this 21st DAY OF FEBRUARY, 2013.