



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**SUCCESSION CAUSE NO. 854 OF 1993**

**IN THE MATTER OF THE ESTATE OF GEORGE KIUNA GATURUHO (DECEASED)**

**TERESIA WANGUI KARIUKI.....APPLICANT**

**VERSUS**

**LUCY NJERI KINA.....1<sup>ST</sup> RESPONDENT**

**MARGARET MUMBI KUNA.....2<sup>ND</sup> RESPONDENT**

**R U L I N G**

1. The deceased herein, George Kiuna Gaturu, died on 19<sup>th</sup> November 1991 and he was apparently polygamous with two (2) wives and nineteen (19) children, five (5) of whom are now also deceased of the children; Five (5) of the girls are married and regarding properties, he had the following land parcels;

- i) Dagoretti/Uthiru/300
- ii) Dagoretti/Riruta/332
- iii) Karai/Gikambura/207
- iv) Plot No.T.239

2. Before me are two Applications; the one dated 18<sup>th</sup> September 2009 by Lucy Njeri Kiuna, the 1<sup>st</sup> Respondent seeking that the Grant made on 9<sup>th</sup> January 1995 be rectified to include her as an Administrator in place of her mother, Salome Muthoni Kiuna.

3. Hellen Wanyina Kihara by her Affidavit sworn on 25<sup>th</sup> February 2010 has opposed the rectification on the grounds that the Applicant both her deceased mother and her Co-Administrator, Margaret Mumbi Kiuna, did not seek the consent of other beneficiaries before obtaining the Grant and that there has been no agreement on how the estate should be distributed. Further, that some of the beneficiaries who have built permanent houses on the deceased's land have been ordered to demolish the same and there is therefore need to protect their Investments.

4. Teresia Wangui Kariuki by her Affidavit sworn on 25<sup>th</sup> February 2010 has taken the same view as Hellen Wanjiru Kihara and adds that her husband did not consent to the distribution of the estate and the Administrators have disregarded existing developments on the deceased's land and intend to shift the common boundaries to the detriment of some beneficiaries.

5. The second Application is dated 9<sup>th</sup> April 2010 and the Applicant is Teresia Wangui Kariuki aforesaid. In it, she seeks orders that the Grant be revoked and/or annulled. In her Affidavit sworn on 9<sup>th</sup>

April 2010, she depones that she is the wife of Peter Kariuki Kiuna, (*deceased*) who was a son of the deceased in this Cause. That her said husband never appended his signature to a consent appointing Margaret Mumbi Kiuna and Salome Muthoni as Co-Administrators and so the grant was not unlawfully obtained.

6. She also depones that she was surprised when in October 2009, the Chief, Uthiru Location told her that the land on which her husband had constructed permanent structures was slated for sub-division. That she was unaware of the proceedings leading to sub-division and that Hellen Wanjiru Kihara had informed her that her deceased husband, Peter Kihara was also unaware of those proceedings and any signatures purportedly inscribed by the same on the Succession documents were forgeries.

7. The other issue raised by the said Teresia Wangui Kariuki is that some of the persons who have benefitted from the estate namely "**H. Muthoni**" and "**M. Wambui**" are not children of the deceased and have no reason to be beneficiaries.

8. Margaret Mumbi Kiuna, by her Affidavit sworn on 14<sup>th</sup> May 2010 deponed that before the Petition for a Grant of Letters of Administration was made, the consent of all beneficiaries was obtained including that of Peter Kariuki Kiuna (*deceased*). That Teresia Kariuki was not a beneficiary to the estate and no obligation was placed on the Administrators to consult with her on the matter.

9. Regarding the allegations that the signatures of certain beneficiaries were forged, Margaret has deponed that the signatures were authentic and that the Grant was therefore properly obtained with all necessary consents having been given.

10. The same position was taken by Lucy Njeri Kiuna by her Affidavit of 14<sup>th</sup> May 2010.

11. I have read the Submissions by the Advocates for the parties and for my part, the Application for revocation of Grant ought to be determined first because should I revoke the Grant then the need for rectification will be dispensed with.

12. **Section 76** of the **Law of Succession Act** provides as follows;

***"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-***

***a) that the proceedings to obtain the Grant were defective in substance;***

***b) that the Grant was obtained fraudulently by the making of a false statement or by the concealment from the Court of something material to the case;***

***c) that the Grant was obtained by means of an untrue allegation of a fact essential in point of Law to justify the Grant notwithstanding that the allegation was made in ignorance or inadvertently;***

***d) that the person to whom the Grant was made has failed, after due notice and without reasonable cause either-***

***i) to apply for confirmation of the Grant within one year from the date thereof, or such longer period as the Court has ordered or allowed; or***

***ii) to proceed diligently with the administration of the estate; or***

***iii) to produce to the Court, within the time prescribed, any such inventory to account of administration as is required by the provisions of paragraphs (e) and (g) of Section 83 or has produced any such inventory or account which is false in any material particular; or***

***e) that the Grant has become useless and inoperative through subsequent circumstances."***

13. From my reading of the Application by Margaret, and the Law above, her complaint is that the Grant was obtained without the consent of all beneficiaries and that the purported consent was a forgery and therefore **Section 76(b)** can be invoked. I have tried to apply my mind to both issues and I am unable to find that the two issues have been proved to my satisfaction. I say so because there is no evidence before me that the signatures to the Affidavit of consent dated 3<sup>rd</sup> June 1993 were forgeries. Mrs. Muhuhu, Commissioner for Oaths attested to all the eighteen (18) signatures including that of Peter Kariuki and I am unable to find that she did so without authenticating them. I have no other evidence to go by save the bare statements made by parties other than those whose signatures are being questioned.

14. Once I have dismissed the alleged forgery of the signatures, it follows that the consent to a Grant being issued to the Administrators was lawful and that being the case is, I see no reason to revoke the grant.

15. But that would not put the dispute to rest as I am certain that the real reason why Teresia and Hellen are opposed to the Administrators' actions is because on 9<sup>th</sup> January 1995, Okubasu, J. (*as he then was*) confirmed the Grant of Letters of Administration and the deceased's properties were to be inherited in the manner therein set out. In the course of implementing that decision, disagreements arose as some of the developments made by some beneficiaries may have been affected. **Is that a good reason to revoke or annul the grant?** I do not think so. That is a matter for the Administrators to undertake with the full participation of all beneficiaries and a surveyor to assist in making the Sub-divisions reasonable and taking into account the developments made by any beneficiary.

16. Turning back to the issue of rectification of the Grant, I see no reason to deny Lucy Njeri Kiuna the opportunity to substitute her mother as Co-Administrator and in spite of the strong objections by Teresia and Hellen, I will grant the order.

17. In the event, while dismissing the Application dated 9<sup>th</sup> April 2010, I will grant the one dated 18<sup>th</sup> September 2009 with the consequence that Lucy Njeri Kiuna shall be appointed Administratrix alongside Margaret Mumbi Kiuna and the two of them should now proceed and finalise distribution of the estate and taking into account the concerns by Hellen Wanyina Kihara and Teresia Wangui Kariuki which I have reproduced elsewhere above.

18. Each party will bear its own costs.

19. Orders accordingly.

**DATED, DELIVERED AND SIGNED AT NAIROBI THIS 31<sup>ST</sup> DAY OF JANUARY, 2012**

**31/1/2012**

**CORAM:**

ISAAC LENAOLA – JUDGE

Kajuju – Court Clerk

Mr. Kilonzo hold brief for Mr. Njoroge for Respondent

No appearance for Applicant

**ORDER**

Ruling duly read.

**ISAAC LENAOLA**

**JUDGE**

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