

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

SUCCESSION CAUSE NO.2104 OF 2004

IN THE MATTER OF THE ESTATE OF NJERI KANURI (DECEASED)

MWANGI GITHUNI NJUGUNA.....APPLICANT

VERSUS

JOSEPH NDUMBU KANURI..... RESPONDENT

J U D G M E N T

The respondent, Joseph Ndumbu Kanuri petitioned the Murang'a Resident Magistrate's Court to be granted letters of administration intestate to administer the estate of Njeri Kanuri (the deceased) who died on 14th October 1972. The succession cause in which the proceedings were recorded is Murang'a RM Succession Cause No.175 of 1983. In the application, the respondent deponed that he was the only surviving child of the deceased. He identified the properties that comprised the estate of the deceased as Loc.11/Maragi/1173 and Loc.11/Maragi/495. The letters of administration were issued to the respondent on 6th December 1984 and were confirmed on 7th June 1986. The two parcels of land that comprise the estate of the deceased were inherited by the respondent.

On 9th July 2004, the applicant filed summons for revocation or annulment of grant pursuant to the provisions of **Section 76** of the **Law of Succession Act**. The applicant claimed that the respondent had obtained the grant fraudulently by making false statements and concealing from the court something that was material to the case. In particular, the applicant stated that the respondent had concealed the fact that the deceased was survived by other children other than the respondent. The applicant named the said children of the deceased to include himself, the respondent and a married daughter known by the name Mwati Kanuri. The applicant stated that, in the circumstances, the properties that comprise the estate of the deceased ought to have been distributed equally between the surviving sons of the deceased i.e. himself and the respondent. Upon being served with the summons for revocation of grant, the respondent filed a replying affidavit in opposition to the application. In the said affidavit, he admitted that the applicant was indeed his brother but averred that the applicant had disappeared from his Murang'a home from 1951. He deponed that the family of the deceased were not able to trace the whereabouts of the applicant until 1999 when the applicant again reappeared. It was the respondent's case that when he applied for letters to administer the estate of the deceased in 1984, he had presumed that the applicant was dead because he had not communicated with the family for a long period of time. He stated that the parcel of land known as Loc.11/Maragi/1173 had been partially sold by the deceased before her death and was therefore not available for redistribution between the applicant and himself. According to the respondent, the deceased had partly sold the land to one Njuguna Waithaka. He urged the court not to allocate the remaining land to the applicant because he was of the view that if the same was allocated to the applicant he would sell the same since the applicant neither had a wife nor children.

This case was listed for hearing of the summons for revocation of grant on 20th July 2010. The respondent was duly served. He did not attend court during the hearing of the summons. This court directed the applicant to proceed with the hearing of the summons for revocation of grant notwithstanding the absence of the respondent. The court was satisfied that the respondent was properly served. The issue for determination by this court is whether the applicant established a case to entitle this court revoke the grant that was issued to the respondent. There is no dispute, and indeed it has been conceded by the

respondent, that the applicant is a dependant of the deceased. The applicant is the brother of the respondent. Under **Section 29(a)** of the **Law of Succession Act**, the applicant being a child of the deceased is a dependant of the deceased whether or not he was available at the time the respondent petitioned the Murang'a Court to be issued with letters of administration intestate in respect of the estate of the deceased. As a dependant of the estate of the deceased, the applicant was entitled to be a beneficiary of the estate of the deceased.

This court therefore finds that the applicant shall be entitled to inherit part of the remaining portion of land known as Loc.11/Maragi/495. The said parcel of land measures 1.2 acres. The applicant shall be entitled to inherit 0.6 of an acre out of the said parcel of land. For the avoidance of doubt, the applicant shall inherit the undeveloped portion of the said parcel of land. Parcel No.Loc.11/Maragi/1173, although previously owned by the deceased, is no longer available for distribution because the same was sold to one Njuguna Waithaka. The applicant claimed that parcel No.Loc.20/Gikindu/Kambirwa/147 belonged to the deceased and should therefore be similarly be distributed between the respondent and himself. The respondent annexed to his affidavit an extract from the register of the title in respect of the said parcel of land. It was clear to the court that the respondent was registered as the owner of the above parcel of land on 7th September 1970. This was even before the death of the deceased. I therefore hold that parcel No.Loc.20/Gikindu/Kambirwa/147 belongs to the respondent and is therefore not available for distribution as part of the estate of the deceased.

In the premises therefore, this court revokes the letters of administration that was issued to the respondent and later confirmed by the Murang'a Resident Magistrate's Court. In its place, this court hereby issues a new grant to the applicant and the respondent. The same is confirmed. The applicant shall inherit a parcel of land measuring 0.6 acres out of the parcel of land known as Loc.11/Maragi/495. The respondent shall inherit the remaining 0.6 acres out of the said parcel of land. The other parcel of land (Loc.11/Maragi/1173) is no longer available for distribution to the dependants of the deceased since the same is already sold to a third party. There shall be no orders as to costs.

DATED AT NAIROBI THIS 11TH DAY OF FEBRUARY, 2011

L. KIMARU
JUDGE