

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

SUCCESSION CAUSE NO.2752 OF 2007

IN THE MATTER OF THE ESTATE OF SOSPETER MBUGUA MUNYUI – (DECEASED)

**JOSEPH NG'ANG'A KIONGO.....
....APPLICANT**

VERSUS

**SARAH MUTHAKA WANYORO.....1ST
RESPONDENT**

**JAMES NJOROGE MBUGUA.....2ND
RESPONDENT**

**PETER MUCHIRI MBUGUA.....3RD
RESPONDENT**

RULING

The deceased, Sospeter Mbugua Munyui died on 3rd September 1998. On 17th October 2007, David Wanyoro Mbugua, James Njoroge Mbugua and Peter Muchiri Mbugua (the respondents) petitioned the court to be granted letters of administration intestate in respect of the estate of the deceased. The petitioners are the sons of the deceased. This court issued them with a grant of letters of administration intestate on 4th April 2008. On 24th September 2008, Joseph Ng'ang'a Kiongo (the applicant) filed summons for revocation or annulment of grant on the grounds that the petitioners had fraudulently obtained the said grant by making false statements and concealing material facts from the court.

In particular, the applicant claimed that the petitioners had concealed the fact that he was a step-grandson of the deceased and therefore entitled to be recognized as a beneficiary of the estate of the deceased. The applicant claimed that he was the son of one Kamau Ng'ang'a (who is deceased) and who was the brother of the deceased to whose estate these proceedings relate. It was his case that prior to his death, the deceased held the title in respect of the parcel of land known as Kiambaa/Thimbigua/3247 (the suit property) in trust for the entire family of Ng'ang'a Kamau by virtue of the Kikuyu customary practices that prevailed at the time. The applicant claims that he is entitled to 1/3 share of the said parcel of land by virtue of that relationship. He alleged that when his father was alive, he used to cultivate and occupy 0.25 of an acre of the suit property. Soon after his death, he was unlawfully evicted from the said parcel of land. It was his case that he should be declared one of the dependants of the estate of the deceased (as a step-grandson of the deceased) and thereafter be declared to be entitled to 1/3 share of the suit property. The applicant's application was supported by two further affidavits sworn by Agnes Wangari Nguu and Fredrick Gathuna Njoroge, a village elder from Karuri, Kiambaa location.

The respondents opposed the summons for revocation of grant. James Njoroge Mbugua swore a replying affidavit in opposition to the summons. He denied the applicant's claim that he was a dependant of the estate of the deceased. It was the respondents' case that the only recognized dependants of the deceased were his children as listed in Form P & A 5. He denied the allegation by the applicant that the deceased held the suit property in trust for the family of Kamau Ng'ang'a (deceased). He urged the court to dismiss the summons for revocation of grant.

Prior to the hearing of the application herein, the applicant and the respondents agreed that they would file written submissions in support of their respective opposing submissions. The said submissions were duly filed. At the hearing of the summons, the parties agreed that this court would render its judgment on the basis of the said written submissions. The dispute between the applicant and the respondent is in regard to whether the applicant is a dependant of the deceased. According to the applicant, he is a dependant of the deceased by virtue of the fact that he is the step-grandson of the deceased. It is the applicant's case that he is the son of Kamau Ng'ang'a (deceased) who was the brother of Sospeter Mbugua Munyui, the deceased to whose estate these proceedings relate. The applicant contends that the deceased held the title in respect of the suit parcel of land in trust for himself and his brother James Kariuki Ng'ang'a. The applicant argued that he was in occupation of the suit property up to the time of the death of the deceased. He alleged that he was evicted from the suit property soon after the death of the deceased. The respondents dispute this fact. They argued that the applicant was a stranger to the estate of the deceased. The respondents denied the allegation by the applicant that the deceased held the title in respect of the suit property in trust from the applicant and his brother.

This court has carefully considered the facts of this case. **Section 29** of the **Law of Succession Act** defines who dependants of a deceased are for the purposes of succession. The dependants are stated to include wife or wives, or former wife or wives, the children of the deceased, whether or not maintained by the deceased immediately prior to his death, such of the deceased's parents, step-parents, grandparents, grandchildren, children whom the deceased had taken into his family as his own, brothers and sisters, and half-brothers and half-sisters as were being maintained by the deceased immediately prior to his death. **Section 39(1)** of the **Act** sets out persons who would be entitled to inherit the estate of the deceased in the event a deceased died without leaving behind any surviving spouse or children. The section recognizes relatives of the deceased up to the sixth degree of consanguinity. The **Law of Succession Act** does not recognize a step-grandchild as a person entitled to inherit from the estate of a deceased where the deceased had a wife, children and grand-children who survived him. In the present case, the respondents are the children of the deceased. Under **Section 29** of the **Law of Succession Act**, they are dependants of the deceased. This court may consider the applicant as a dependant of the deceased if he established that he was maintained by the deceased prior to his death. That is not the case here. The applicant claims part of the estate of the deceased by virtue of the contention that the deceased held the suit property in trust for his late brother Kamau Ng'ang'a. From the evidence adduced, it was apparent that the applicant had not occupied the suit property as he claimed prior to the death of the deceased. The deceased could not have held the title in respect of the suit property in trust of his late brother because the deceased was issued with the said title a few months before his death. According to the certificate of official search, the said title was issued to the deceased on 16th January 1998. The deceased died on 3rd September 1998. If indeed the applicant occupied the suit property immediately prior to the death of the deceased, then he did so as a licensee of the deceased. Such occupation did not result into any proprietary right accruing or arising in respect of the suit property to the applicant.

It is clear from the foregoing that the summons for revocation of grant lacks merit and is hereby dismissed with costs to the respondents.

DATED AT NAIROBI THIS 11TH DAY OF FEBRUARY, 2011

L. KIMARU
JUDGE