



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
SUCCESSION CAUSE NO.903 OF 2010
IN THE MATTER OF THE ESTATE OF GERALD KAMAU MUNYINYI – (DECEASED)

JANE MWEMBU.....1ST APPLICANT
JANE NDUTA.....2ND APPLICANT
LUCY WANJUHI.....3RD APPLICANT
EDDAH WANJIKU.....4TH APPLICANT
SARAH NJOKI.....5TH APPLICANT

VERSUS

ANDREW MUNYINYI KAMAU.....1ST RESPONDENT
MICHAEL IGOGO KAMAU.....2ND RESPONDENT
ELIZABETH KAHAKI.....3RD RESPONDENT

RULING

The applicants filed summons for revocation of grant pursuant to the provisions of **Section 76** of the **Law of Succession Act**. In particular, the applicants sought the revocation of the grant issued to the respondents on 29th December 1989 on the grounds that the respondents had concealed material facts from the court in **Kiambu Succession Cause No.56 of 1987** in respect of the estate of Gerald Kamau Munyinyi (*the deceased*). The applicants further stated that the respondents had further concealed or falsified the fact that the applicants were not entitled to equal shares of the estate of the deceased. They were aggrieved that the respondent had ignored other beneficiaries of the deceased during the distribution of the estate of the deceased. The applicants stated that the distribution of a parcel of land that comprised the estate of the deceased had resulted in the applicants being denied access to their respective homes. The application is supported by the annexed affidavit of the 1st applicant. She swore a further affidavit in support of the summons. The application is opposed. The 3rd respondent swore a lengthy replying affidavit in opposition to the application.

Directions were taken in this matter. Counsel for the parties to this summons agreed by consent to file written submissions in support of their respective clients' positions. The said submissions were duly filed. During the hearing of the case, Mr. Gachomo, counsel for the applicants and Mr. Chege, counsel for the respondents made rival oral submissions. I have carefully considered the said submissions. I have also considered the facts as set out in the respective affidavits filed on behalf of the applicants and on behalf of the respondents. This is a long standing and protracted dispute. Letters of administration in respect of the estate of the deceased was issued to Priscilla Wairimu, George Gatharia Kamau, Andrew Munyinyi Kamau and Michael Igogo Kamau. The grant was confirmed on 29th December 1989 by the then Senior Resident Magistrate at Kiambu.

Prior to the said grant being confirmed, some of the beneficiaries were not satisfied with the manner in which the administrators had proposed to distribute a specific parcel of land known as LR.No.Kiambaa/Ruaka/641 (*the suit property*). The dispute was essentially between Priscilla Wairimu

Kamau and her son George Gatharia. George Gatharia was aggrieved that six (6) acres out of the suit property had been distributed to her sister Elizabeth Kahaki. After considering the evidence that was presented before the court, the learned magistrate had this to say:

“I have very carefully evaluated all the evidence tendered before this court. The central issue in dispute here is whether I should adopt and confirm the letters of administration in the manner suggested by the mother of Gatharia and Kahaki. It is her wish that the unmarried daughter Kahaki should get the lion’s share of the land Ref.No.Kiambaa/Ruaka/641 i.e. 6 acres. She has presented to the court a form of application for consent of Land Control Board dated the 2/1/1986 showing that the deceased wanted to give Kahaki 6 acres before he died but he failed to accomplish his mission before he died ... It has also transpired that the objector is not a biological son of the deceased because he was born out of wedlock. This fact may have prompted the deceased to favour his biological daughter. The objector has come up with an absurd proposal that his mother should not share any of the deceased’s land and I find this quite untenable. The objector did not impress me as a man of truth and I do not believe what he told this court.”

The trial Magistrate then proceeded to distribute the suit property as proposed by Priscilla Wairimu, the mother of George Gatharia. George Gatharia was dissatisfied with this decision and duly filed an appeal to this court. Among the grounds of appeal that he put forward was that *“under the Kikuyu customary law, a daughter of the deceased whether married or not is not entitled to a bigger share of the father’s land than the surviving son or sons.”* The appeal was considered by Owuor J (*as she was then*). In her ruling delivered on 9th June 1998, she upheld the preliminary objection raised by the respondents in regard to the propriety of the appeal. As a consequence, she struck out the appeal but with no orders as to costs.

After the striking out of the appeal, the suit property was distributed in accordance with the certificate of confirmation of grant that had earlier been issued by the trial Magistrate. Priscilla Wairimu Kamau, the mother of George Gatharia Kamau died on 3rd July 1992. The letters of administration in respect to her estate was firstly issued to George Gatharia Kamau on 30th October 2001 before the same was revoked and a new grant issued to the said George Gatharia Kamau and his sister Elizabeth Kahaki (also known as Elizabeth Kamau Munyinyi). This grant was issued on 29th April 2005. George Gatharia Kamau died on 17th August 2008. On 3rd March 2009, the grant was amended. Elizabeth was made to be the sole administrator of the estate of her mother. The part of the estate of the deceased (i.e. Gerald Kamau Munyinyi) that was inherited by Priscilla Wairimu was equally distributed among all the children of Priscilla. The parcel of land that was so distributed is now referred to as parcel No.Kiambaa/Ruaka/926. This confirmation of grant was issued on 22nd October 2009.

This court has taken the trouble to give the litigation history in regard to the distribution of the estate of the deceased so that the decision that this court will henceforth render will have a context. The estate of the deceased was distributed more than twenty (20) years ago by the Senior Resident Magistrate at Kiambu. From the proceedings before the said court, it was clearly not disputed that the various parcels of land that belong to the estate of the deceased would be distributed in accordance with the wishes of the deceased. Infact, the court noted that the distribution of parcel No.Kiambaa/Karura/624 had no dispute because the members of the family of the other widow of the deceased (referred to as the mother of Michael Igogo Kamau) had agreed on the mode of distribution. The dispute was between Priscilla and her children. The Kiambu court heard the dispute and determined it. An appeal was filed but was dismissed. Whether the appeal was determined on merits or on technicalities is neither here nor there. This is because even after the striking out of the appeal, George Gatharia Kamau had the right to file another competent appeal. He did not bother to lodge such an appeal.

As stated earlier in this ruling, the parcels of land that comprise the estate of the deceased have already been sub-divided and distributed. The beneficiaries have been issued with their respective titles. The applicants cannot therefore be allowed to reopen the succession dispute more than twenty (20) years after the same was resolved by the court. The applicants claim that they were not consulted at the time the proceedings were taking place before the Kiambu Magistrate’s Court does not wash because it was

apparent that the deceased had distributed the parcels of land that comprised his estate to his two wives prior to his death.

In the premises therefore, I find no merit with the summons for revocation of grant filed by the applicants. The same is hereby dismissed with costs.

DATED AT NAIROBI THIS 8TH DAY OF MARCH, 2011

L. KIMARU
JUDGE