



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT NAKURU

SUCCESSION CAUSE NO. 105 OF 2010

IN THE MATTER OF THE ESTATE OF DAVID NGUGI MUHORO (DECEASED)

MARTHA NDATA MBURU.....APPLICANT

VERSUS

JOHN NGUGI RUBIA.....RESPONDENT

RULING

DAVID NGUGI MUHORO (the deceased) died on 30/10/1999. The deceased's father, John Ngugi Rubia (respondent) petitioned the court for grant of letters of administration and the grant was confirmed on 25/1/2006 in SPM Succ. Cause No. 82 of 2005. The whole share of the deceased's property, **NYANDARUA/SOUTH KINANGOP/3602** vested in John Rubia. In Form P & A 5, the respondent indicated that the only beneficiaries to the deceased's estate were John Ngugi Muhoro then 77 years and M.M 17 years.

On 1/3/2010, Martha Mburu filed summons for revocation of the grant issued on 26/9/05 and confirmed on 25/1/2006, on grounds that the grant was fraudulently obtained by the respondent concealing material facts and that the respondent secretly applied for the letters of administration. The application was supported by an affidavit dated 1/3/2010 and a further affidavit dated 18/5/2010, sworn by the said Martha Ndata Mburu.

The applicant deponed that she is the wife of the deceased, having gotten married to him in 1983. They had 3 issues of the marriage namely:-

1. John Ngugi Muhoro – 25 years
2. Mercy Gathoni Muhoro – 22 years
3. Hezekiah Mburu Muhoro – 20 years.

She further deponed that the respondent is her father-in-law and she had just learnt that he secretly took out letters of administration in PMCC Succ. No. 83/05 and did not name her or her children as beneficiaries of the deceased's estate except one child; that the respondent wants the whole parcel of land **NYANDARUA/SOUGHT KINANGOP/3602** to vest on him yet it is family land on which she resides with her family and the land is now threatened with subdivision. The applicant denied allegations made by the respondent that at the time of the deceased's death, she had separated from him. She contends that she fully participated in the burial as evidenced by a photograph in which she appeared with her children and the coffin bearing the body of the deceased (MNM5). She denies having been consulted before the letters of administration were applied for. Upon realizing that the respondent had obtained the letters of administration, she reported to the District Officer South Kinangop who wrote to the respondent on

24/11/06 (MNM6). Investigations were carried out and as a result, the respondent was charged in Nyahururu CRC. No. 2238/07, with the offence of recklessly making a false statement (MNM7). The applicant also deponed that the consent signed in support of the summons for confirmation is false because her child is not M.M but she is known as Mercy Gathoni Muhoro. The daughter's ID was exhibited (MNM(a) and (b) and that in 2005, the daughter was only 17 years old and was incapable of giving her consent. The applicant exhibited a sale agreement dated 10/3/2010 signed by the respondent as the vendor in respect of the suit land **NYANDARUA/SOUTH KINANGOP/3602** (MNM10). It is her case that the respondent's actions were not genuine because he left out one of the deceased's properties No.1981 (title MNM11). She did not object to the gazettment of the succession cause because she was not aware of the proceedings.

The respondent filed a replying affidavit in opposing the application. He deponed that he is the administrator of the deceased's estate because at the time of the death of his son, the applicant had separated from the deceased; That the applicant was no longer a member of the family and the family decided that he should go ahead with the application and one of the deceased's children was named as a dependent. He denied that the applicant and her children have ever resided on the said land. He denied that the applicant would be best suited as an administrator of the deceased's estate but that he intends to subdivide the land for the benefit of the children of the deceased.

The respondent has not denied that the three children named by the applicant belong to his deceased son. He has not given any explanation why the said children were not named as beneficiaries if indeed the applicant had separated with the deceased. Besides by the time the grant was confirmed, the elder son of the deceased was of the age of majority. The respondent has not offered any explanation why he was not one of the signatories to the consent.

The applicant does accept that the deceased had a second wife who died soon after the deceased's death. She did not have any children. Though we have not been told when she died, when the respondent applied for letters of administration, he did not indicate that she was a beneficiary. It is probable that she had died as of 2005 when the respondent applied for letters of administration.

The respondent claims to have named one of the deceased's children as a beneficiary. The name is M.M. The applicant denies that those are the daughter's names. An identity card N. 26695355 was exhibited which indicates that the deceased's daughter is Mercy Gathoni Muhoro. The question is whether the person named as the beneficiary is the deceased's daughter. In any event, at the time of the application she was only 17 years old and she had not attained the age of majority to be able to sign a consent. She could not have been a signatory to any consent. Even then, the question that begs is this, why would the respondent pick one of the children and name her as a beneficiary and leave out the others. The eldest son of the deceased was over 18 years at the time of confirmation of the grant and the respondent has not explained why he was not named as a beneficiary or called upon to sign the consent.

The respondent contends that he applied to be the administrator of the deceased's estate in order to hold the land in trust for the benefit of the children of the deceased. However, he went ahead and only named one of the deceased's properties namely **NYANDURUA/SOUTH KINANGOP/3602**. **NYANDARUA/MUTONYORA/1576** was not indicated in the list of the deceased's property. The respondent has not said that he did not know of the existence of the other plot. He has not given any reason why he selectively picked on only one plot. A look at the confirmed grant clearly shows that the whole share in plot 3602 vested in the respondent. Despite the fact that the respondent had one other beneficiary, he did not indicate that he was going to hold it in trust for the said beneficiary. The respondent's explanation is not convincing that he meant to hold the land in trust.

To demonstrate that the whole process was suspect, right from the onset, having named "**M.M**" as a minor, (whoever she was) the law required that there be two administrators. It was erroneous for the respondent to be allowed to administer the estate alone.

The applicant annexed as **MNM10**, a purported sale agreement dated 15/6/2010 in respect of the disputed land plot No. 3602 made between the respondent as a vendor and one Margaret Wanjiku Kiarie as the

buyer, for a consideration of Kshs.700,000/- and a deposit of Kshs.100,000/- had been made. This agreement has not been disputed by the respondent. The question is, who allowed the respondent to sell the property when he is only a trustee of the beneficiaries.

There are many questions that have been posed for which there are no answers and the only reasonable answer is that the respondent fraudulently obtained the said letters of administration and did not consult either the applicant or the children who are the beneficiaries of the deceased's estate. The intended sale of the suit land would have totally denied the deceased's children of that right to their property. The fact that the respondent only applied for administration of part of the estate also raises questions. His intention cannot be genuine. There is evidence that the applicant had complained to the District Officer about the respondent's actions and there are pending criminal proceedings in respect of these succession proceedings. This court is satisfied that the grant of letters of administration was obtained fraudulently without consulting the beneficiaries of the estate. The grant issued to the respondent on 26/9/2005 and confirmed on 25/1/2006 is hereby revoked and the respondent is hereby restrained from dealing in or interfering with the suit land and estate of the deceased in any way. Martha Nduta is appointed as the administrator of the deceased's estate. The family can agree on whether they want another person to be a co-administrator with the applicant. The respondent to bear costs of this application.

DATED and DELIVERED this 13th day of April, 2011.

R.P.V. WENDOH
JUDGE

PRESENT:

Mr. Simiyu for the applicant.

N/A for the respondent.

Kennedy – Court Clerk.