



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

SUCCESSION CAUSE NO. 169 OF 2009

IN THE MATTER OF THE ESTATE OF THE LATE NDUBI ITIRITHIA (DECEASED)

EVANGELINE KAGUMO NDUBI PETITIONER

VERSUS

CYPRIANO KITHARA NDUBI OBJECTOR

JUDGMENT

Evangeline Kagumo Ndubi the widow of the deceased petitioned for grant of letters of administration intestate in this cause. She listed the following as the beneficiaries of this estate.

1. ***Benjamin Muithia***
2. ***Cyprian Kithara***
3. ***Cornelius Kinge***
4. ***Priscilla Ntiritwa***
5. ***Timothy Kinyua***
6. ***Elizabeth Kaburio***
7. ***Andrew Nkunja***
8. ***Joyce Kathambi***
9. ***Lucy Gakii***

In filing her petition, Evangeline filed a consent showing that all the above nine beneficiaries consented to her petitioning the court for the grounds. The consent is dated 18th March 2009. A grant was issued on 13th May 2009. On 18th June 2009, Evangeline filed summons seeking leave to confirm the grant before the expiry of six months. In that summons, Evangeline stated thus:-

4. ***That I got sick from January 2008 up to date and I cannot be able to get proper medical treatment because I have no proper source of income to enable me meet the medical expenses attached herein is doctor's medical notes marked EKN 1. source of income to enable me meet the medical expenses.***

5. ***That I have sold two portions each measuring 50 x 100 fts from the above said parcel to two different persons but the purchasers are in fear to give me the remaining balance and die before I transfer the portions to them as we had agreed in the sale agreement.***

6. ***That I feel I cannot wait for six months period in order to get confirmation granted due to my***

medical problems which I want to go for further treatment using the remaining balance which will be paid by purchasers after transfer of their portions to their names and also if the remaining portion is registered in my names, I shall be able to utilize it properly.

7. That 30 (thirty) days has expired from the date of publication in the Kenya Gazette and no objection is lodged.

8. That from the facts stated hereinabove it is quite plain that this honorable court ought to confirm grant of letters of administration intestate notwithstanding 6 (six) period is not over.

9. That the deceased's survivors have no objection with the confirmation of grant and distribution of property attached herein is signed consent marked EMN II.

10. The land parcel No. Abothuguchi/Gaitu/1236 which is the only deceased's property to be distributed as follows:-

- (a) Henry Kithia M'Munyua – 0.005 ha.**
- (b) Japhet Kinyua Mwongera – 0.005 ha.**
- (c) Evangeline Kagumo Ndubi – Balance.**

The court heard that summons on 29th June 2009. On that day, the court granted leave for the grant to confirm as prayed in the affidavit of Evangeline as reproduced above. The court is considering the summons dated 15th February in this judgment. That summons seeks the revocation of the grant on the ground that it was obtained fraudulently by Evangeline by making false statements and that it was obtained by means of untrue allegations of facts. That summons for revocation was filed by Cyprian Kithara Ndubi (Cyprian). Cyprian deponed in his affidavit in his support that Evangeline is his mother while the deceased was his father. He stated that he was unaware of the filing of this succession. He got to know that the succession was filed after a surveyor went on to the land and begun to subdivide it. On making enquiry at the Meru High Court, he found that this succession was filed and an consent was filed showing that he consented to the same. He termed that consent as a forgery. He further stated that two of his brothers Benjamin Mwithia and Cornelius Kinge had not signed the consent attached to the petition. He further stated that Evangeline had obtained confirmation of the grant hurriedly to conceal that fraud. Benjamin and Cornelius filed affidavits and confirmed that they had not filed signed the consent filed in this succession cause. They stated that they too came to know of this succession when a surveyor attended the suit property and begun to subdivide it. Andrew Nkunjia one of the beneficiaries of this estate in his affidavit stated that Cyprian signed the consent in his presence and was aware of this succession. I have considered the affidavits filed in this matter. What is very clear is that Evangeline is illiterate. All the documents filed by her in this matter are thumb printed. It would seem that someone was in charge and maneuvered the filing of this succession cause. What is alleged by Cyprian and his brothers is very serious. They should proceed to the police and file a complaint in respect of their allegation that their signature were forged. Evangeline in her affidavit dated 8th October 2010 stated that the suit property was sub divided and from the annexed green card it would seem that two parcels came out of the suit property being parcels number 2820 and 2822. Section 82 (b) (ii) of the Law of Succession Act forbids the selling of immovable property before a grant is confirmed. From the paragraphs of Evangeline's affidavit reproduced above, it would seem that Evangeline sold the suit property before the grant was confirmed. Since however the purported purchasers are not before the court and have not been heard and because Cyprian only seeks the revocation of the grant, I grant the following orders:-

- 1. The grant issue herein to Evangeline Kagumo Ndubi is hereby revoked.**
- 2. A fresh grant shall be issued in the joint names of**
 - (a) Evangeline Kagumo Ndubi**
 - (b) Cyprian Kithara Ndubi**
 - (c) Benjamin Mwithia M'Ndubi**
 - (d) Cornelius Kinge Ndubi**
- 3. An order of inhibition is hereby issued in respect of parcels number Abothuguchi/Gaitu/2820 and 2822 until further orders of this court.**

4. *Evangeline Kagumo Ndubi shall pay to Cyprian Kithara Ndubi costs of the summons dated 15th February 2010.*

Dated, signed and delivered at Meru this 18th day of May 2011.

**MARY KASANGO
JUDGE**