



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MERU
Succession Cause 92 of 2007

IN THE MATTER OF THE ESTATE OF M'MUGUNA KIARA (DECEASED)

JULIUS KARANI MUGUNA PETITIONER

VERSUS

FREDRICK MIRITI M'MUGUNA 1ST INTERESTED PARTY
JAPHET GIKUNDA M'NKANATA ... 2ND INTERESTED PARTY
KINANU M'ARIMI TABITHA 3RD INTERESTED PARTY
GEOGINA KAJUJU MUGUNA 4TH INTERESTED PARTY
ALICE WANJA MUGUNA 5TH INTERESTED PARTY

RULING

The petitioner Julius Karani Muguna petitioned for grant of letters of administration intestate in respect of the estate of the deceased M'Muguna Kiara deceased. In the affidavit, P & A5 in support of the petition, Julius listed the names of the beneficiaries who survived the deceased as follows:-

- (i) *Fredrick Miriti Muguna – son*
- (ii) *Alexander Nkoroi – son*
- (iii) *Julius Karani Muguna – son*
- (iv) *Joyce Kithiru – Daughter – Married*
- (v) *Beatrice Muthoni – Daughter – Married*
- (vi) *Alice Wanja – Daughter – Not married*
- (vii) *Georgina Kajuju – Daughter – Married*

He listed in that affidavit the asset of the deceased as only one property, that is, LR. No. *Abogeta/U-Chure/1603*. A grant was issued on 26th June 2007. Julius filed an application for confirmation of grant by his Chamber Summons dated 23rd January 2008. In that application, he proposed that distribution be in the following terms:-

- (i) *Abogeta/U-Chure/1603*
- (a) *Julius Karani Muguna – 1.83 acres*
- (b) *Thomas Kimathi M'Rinkanya – 0.50 acres*
- (c) *Alice Wanja – 0.75 acres*
- (d) *Georgina Kajuju – 0.75 acres*

Even though there was no evidence that the beneficiaries who survived the deceased had been served with that Chamber Summons for confirmation and even though there was no consent filed by those beneficiaries, the grant was confirmed as prayed on 12th March 2008. As can be seen from that mode of distribution, not all the beneficiaries were given property and further there is an inclusion of a name of

Thomas Kimathi M'Rinkanya in the list of those who inherited the deceased estate. That person had not been included in P & A 5. Those anomalies provoked the filing of the summons dated 1st July 2009 which is the subject of this ruling. The applicant argued in support of that application that Julius failed to include another property of the deceased namely *Abogeta/U-Chure/1602*. The summons which is the subject of this ruling seeks an order that the court will allow this estate to be administered jointly by Julius Karani the petitioner and Fredrick Miriti M'Muguna. It further seeks that the form P & A 5 be amended to include parcel number 1602 as property of the deceased. Thirdly, it seeks the setting aside of the confirmation of grant on 12th March 2008. In support of that application, it was argued that parcel number 1602 was up to now registered in the deceased name. Julius in response to that submissions accepted it is the correct position. He however said that he all along believed that parcel number 1602 registered in the name of Alexander Nkoroi, and hence why he did not include it as an asset of the deceased. It was also submitted that at confirmation, Julius had distributed the deceased land to a stranger, that is, Thomas Kimathi M'Rinkanya. To this Julius responded by saying that he had sold to Thomas what was his entitlement on parcel number 1603. He however accepted that to date, parcel number 1603 is still registered in the deceased name. Although Julius opposed the application on the basis that a confirm grant cannot be set aside, I believe in view of failure of Julius to serve the other beneficiaries or his failure to get their consent, there is sufficient reason to set aside the confirmed grant. That requirement of service and consent is to be found in Rule 40 (7) of the Probate and Administration Rules which provides that at the hearing of an application for confirmation all dependants or other persons who may be beneficially entitled who have not attended court in person should file a consent as provided under form 37 of those Rules. In response to the opposition by Julius, I say that court have power to set aside a confirm grant and I find my support in the holding of the case **In Re Estate of Gitau (Deceased)** [2002] 2 KLR. In that case, the Court held as follows:-

1. ***Distribution of the estate comes during the proceedings to confirm the relevant grant and a party dissatisfied with the distribution may not necessarily be dissatisfied with the grant of letters of administration and vice versa. That being the position, it becomes unreasonable for a person dissatisfied with the distribution of the estate only to proceed to ask for revocation or annulment of the grant which, as in this case, has nothing wrong.***
2. ***While Section 76 of the law of Succession Act should therefore be relied upon to revoke or annul a grant, it is not proper to use the same section where the objector is challenging the distribution only.***

However, considering that Julius firstly failed to include all the properties of the deceased and failed to obtain consent of the beneficiaries whilst confirming the grant I am of the view that the interest of justice would best be served by revoking the grant issued to Julius. Under Section 66 Cap 160 the Court has the final discretion in regard to the person or persons to whom grant of letters of administration should be issued having the best interest of all concerned in mind. I therefore grant the following orders:-

3. ***The grant issued on 26th June 2007 and confirmed on 12th March 2008 is hereby revoked.***
 4. ***I order that a grant be issued to Julius Karani Muguna and Frederick Miriti Muguna jointly. Each may either on their own or jointly seek confirmation of that grant immediately not withstanding that the 6 months period has not expired.***
 5. ***There shall be no orders as to costs.***
- 6

Dated and delivered at Meru this 21st day of May 2010.

MARY KASANGO
JUDGE

