



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
Succession Cause 578 of 1999

IN THE MATTER OF THE ESTATE OF ALLAN NGUGI – (DECEASED)

RULING

I have before me for determination summons for revocation dated 13th September, 2006 filed by Jane Wanjiku Muchai (referred, to as ‘**the objector**’). She prays that grant of Representation dated 17th May, 1999 granted to John Kimani Muchai and Grace Njeri Irungu be revoked and annulled. There were other prayers also made in the said summons concerning rendering of Accounts, revoked, and annulled. There were other prayers also made in the said summons concerning rendering of Accounts and revoking the transfer if any, of the estate property e.t.c.

The summons is supported by grounds on the face of the summons and on the supporting affidavit sworn by the objector on 12th September, 2006. According to the objector the deceased was the eldest son of her father who had sired six children the objector being the fifth child of their father.

According to her she being a single parent, the deceased who was not married, was supporting her and her children. She further averred that after the death of her father a succession cause No.17 of 1995 was filed and the children agreed to register in the name of the eldest brother (the deceased in the present cause) in trust for all the siblings. After the death of the brother (the deceased) the family agreed that John Kimani Muchai and his wife Grace Njeri be appointed as the administrators and unknown to her a person claiming to be the wife of the deceased had been given the share in the properties, which were registered in trust for the whole family.

The three protestors filed their replying affidavit sworn by one Lucy Wairimu Ngugi (the 1st protestor) on 8th January, 2007 and grounds of opposition dated 11th January, 2007. It is averred by them that the summons for revocation is filed to delay the process being finalized. These protestors were declared dependants of the deceased vide a judgment (*sic*) dated 15th October, 2004 by Koome J. They were so declared under the provisions of Section 26 of the Laws of Succession Act and it was further ordered that the three Applicants (the three protestors herein) shall be entitled to fifty per cent (50%) of the deceased estate and that the Petitioners should file revised schedule of distribution. The Petitioners has proposed to hold the properties in trust for all the beneficiaries (including the objector).

A caveator Michael Mwangi told the court that he is a nephew to the deceased and have stayed with him and that the deceased had orally given him share in all his properties. The caveator is a son to the Petitioner John Kimani Muchai who is a beneficiary to the estate.

Mr. Nyaga the learned counsel for the Petitioner in his submission raised the issue of non-observance of basic procedure in the matter. The Petitioner John Kimani Muchai has sworn affidavit on 16th November 2006 and filed on 17th November, 2006.

According to his submissions the three protestors’ mother filed a summons for revocation which was

allowed by Koome J. vide her ruling dated 15th October 2004 as mentioned hereinbefore. I reiterate that as per the said Ruling the three protestors were granted 50 per cent share in the deceased estate. Mr. Nyaga tried indirectly to raise some issues on the said Ruling, by contending that at the time of arriving at the shares of the protestors, the court did not hear the other beneficiaries.

I must hasten to note that the above contention, even if it is true and, which I may agree to as cannot be reviewed or set aside by any party and in the event, this court cannot interfere with the findings, and orders made by Koome J. In short, the attempt to do so is to ask me to sit on appeal over the said ruling and I have to firmly refuse any such attempt, or, should I say the temptation.

As per the record of the case, the Ruling stands and the protestors were given 50 per cent share of the deceased's estate.

It now behoves on me to decide what is the estate of the deceased. To begin with, the deceased can only give out what in law was his own. The property held in trust is not termed as the absolute ownership of the deceased. The affidavits sworn by the petitioner as well as by Morris Wainaina Muchai, the brother to the Petitioner as well as the Deceased do specifically confirm with the averments of the objector that the deceased being the eldest son of the family they agreed to register all assets of the estate of their father in his name in trust of his siblings. The said grant was issued and confirmed accordingly in succession cause No.17 of 1975 in Limuru Court after their father died in 1968. These averments are not denied or even responded by the protestors. In view of that position, this court will accept the contention that the deceased held the properties of their deceased father in trust for his children, his own siblings.

In pursuance to the said ruling a certificate of confirmation was filed on 15th February, 2005 but I do note that the same is not signed by the court.

It is on record that after the Ruling of Koome J. (supra), various applications were filed and eventually a consent order was made before me on 29th May, 2006.

I shall quote the same.

“By consent:

- 1. The remaining issues of the appointment of the Public Trustee, pursuant to the Administrator raised in application dated 24th November, 2004 be marked as withdrawn. Thus the said application is now determined fully.*
- 2. As regards the application dated 16th May, 2005 by the Petitioner, It is agreed that the Petitioner's Accounts annexed thereto be accepted as true.*
- 3. The only remaining issue is to execute the Judgment of the court dated 15th October, 2004. The Petitioners have failed to file the revised schedule of the distribution of the assets of the estate within stipulated period.*
- 4. The defendants are at liberty to file revised schedule of the distribution of the estate as per the contents of the judgment.*
- 5. The Petitioner be at liberty to file the same within 5 days.*

Thereafter the certificate of confirmation be issued in accordance with the revised schedule.

K.H. RAWAL

JUDGE”

Thereafter, this summons was filed and the said revised schedule thus is not on the record.

Unfortunately this matter has not been looked into closely and hence the delay in finalization. Once, I have now held that the deceased held his father's properties in trust for the family, the only issue to be determined is which property or properties were so held. Obviously, after ascertaining this position, the Petitioners or the protestors shall have no problem to execute the orders made in the Judgment (sic) of 15th October, 2004.

To make it clearer I reiterate that the properties held in trust by the deceased shall be divided in equal shares with his siblings and their heirs and as the deceased had no other dependants or heirs, his share shall wholly be granted to the protestors. The properties which were absolutely held by the deceased shall be shared by the parties as per the judgment (sic) of 15th October, 2004.

To expedite the process I direct that the Petitioner shall file summons for confirmation with affidavits giving full details of the properties which they consider as held in trust for the family by the deceased. This submissions be filed and served within 21 days from the date hereof.

The protestors and other beneficiaries to file their affidavits in protest or otherwise within 21 days from the date of service of the summons for confirmation. No order on costs.

Orders accordingly.

Dated and signed at Nairobi this 28th day of January, 2009.

K.H. RAWAL

JUDGE

28.1.09