

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NYERI

Succession Cause 153 of 2008

IN THE MATTER OF THE ESTATE OF JEFITHA NJOKA JOEL (DECEASED)

IN THE MATTER OF THE ESTATE OF JEFITHA NJOKA JOEL ... DECEASED

ALICE NJOKI NJOKA APPLICANT

Versus

NELLY WANJIKU NJOKA RESPONDENT

JUDGMENT

The petitioner Nelly Wanjiku Njoka petitioned in the Kerugoya Magistrate's Court in Succession Cause No. 153 of 2006 for Letters of Administration Intestate in the estate of Jefitha Njoka Joel deceased. In the petition she stated that she was the wife of the deceased. She listed herself and six children as the survivors of the deceased estate. It is material to note that one of the children listed namely Joshua Kinyua Njoka was listed as a minor. His actual age however was not indicated. If indeed Joshua is a minor the learned magistrate erred for having entertained Nelly's petition as a sole petitioner. That contravened Section 58 of the Law of the Succession Act. This section forbids one person alone to petition for grant where there is a continuing trust, in the case of Grant of Letters of Administration Intestate, unless it is a public trustee. On that ground alone the grant issued to Nelly by the lower court shall be revoked. Secondly once Nelly petitioned for grant she was required to have the petition gazetted. She did not gazette the petition and that contravened Section 67(1) of the Law of Succession Act. That section provides as follows:-

“(1) No grant of representation, other than a limited grant for collection and preservation of assets, shall be made until there has been published notice of the application for the grant, inviting objections thereto to be made known to the court within a specified period of not less than thirty days from the date of publication, and the period so specified has expired.

(2) A notice under subsection (1) shall be exhibited conspicuously in the court house, and also published in such other manner as the court directs.”

The petitioner did disclose in the petition that the value of the deceased estate was Kshs. 200,000. The magistrate's court jurisdiction under Rule 7(3) of the Probate and Administration Rules is limited to the value of the estate to the tune of kshs.100,000. The learned magistrate therefore had no jurisdiction to entertain the petition. What however is for consideration in this judgment is the summons dated 19th March 2008 filed by Alice Njoki Njoka. In that summons Alice seeks revocation of the grant issued by Kerugoya court to Nelly. Revocation is sought on the ground that the grant was obtained fraudulently. Alice in her affidavit in support of that summons stated that she is a co-wife of Nelly. She stated that Nelly secretly obtained a letter from the chief of Thiba Location which failed to include her and her children which she had with the deceased. Alice annexed a letter from the chief of Kirinyaga District which listed Nelly as the first wife with five children and Alice as the second wife with five children. Nelly denied in her affidavit that Alice was the wife of the deceased. She stated that the deceased did not have capacity to enter into marriage with Alice. She attached a marriage certificate which showed that Nelly and the deceased married under the African Christian Marriage and Divorce Act on 1st October 1998. I will not make a finding at this stage about that alleged marriage for I am of the view that it is necessary for that evidence to be interrogated through cross examination. It suffices to state that even if

Alice does not in law qualify as a wife of the deceased, her children would remain the children of the deceased. I make a finding that Nelly did not deny that those children of Alice were children of the deceased. Because of the short comings that I have highlighted above, that is, the manner in which the lower court handled the succession matter and because Nelly erred to have failed to include all the children of the deceased, I grant the following orders in this judgment:-

- 1. That the grant issued to Nelly Wanjiku Njoka in SRM Kerugoya succession Cause No. 92 of 2006 over the estate of JEFITHA NJOKA JOEL dated 3rd August 2006 is hereby set aside and revoked.**
- 2. The court hereby orders that a fresh grant be issued jointly in the names of NELLY WANJIKU NJOKA and ALICE NJOKI NJOKA.**
- 3. That the title in the name of NELLY WANJIKU NJOKA of parcel No. MWEA/TEBERE/B/1274 be and is hereby cancelled. The Land Registrar is hereby order to issue another title in the name of the deceased namely JEFITHA NJOKA JOEL deceased. In making the cancellation and issuing a title in the deceased name the Land Registrar shall dispense with the necessity of having the original title.**
- 4. I order that this matter be consolidated with High Court Nyeri Succession Cause No. 42 of 2008 since it relates to one and the same estate.**
- 5. The costs of the summons dated 19th March and 8th April 2008 shall be paid to Alice Njoki Njoka by Nelly Wanjiku Njoka.**

MARY KASANGO

JUDGE

Dated and delivered this 14th day of May 2009

M. S. A. MAKHANDIA

JUDGE