



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MERU
Succession Cause 1 of 2002

LUCY K. IKIARA PETITIONER/RESPONDENT

VERSUS

ROSE KAMBURA M'IKIUGU 1ST APPLICANT

BERNICE NKUENE M'IKIUGU 2ND APPLICANT

STELLA KANUGU M'IKUIGU 3RD APPLICANT

RULING

Petition for grant of Letters of Administration for the above estate was initially filed by Lucy Ikiara. In her petition, the petitioner listed herself as the sole surviving beneficiary of this estate. The only asset listed in that petition was the deceased's death gratuity. Later, the petitioner applied for an order to appoint a joint administrator with her on the basis that there was a continuing trust and in view of section 58 of The Law of Succession Act there was need of two administrators. The petitioner did not disclose the identity of the minor in respect of whom there was a continuing trust.

The court acceded to that application and ordered Edith Gacheri M'Ikiugu to be the joint administrator. Lucy Ikiara solely applied by summons dated 16.5.2009 for rectification of that grant. She made that application without involving her co-administrator Edith Gacheri M'Ikiugu. The rectification she sought was for the confirmed grant to include an additional plot as an asset of the estate. That plot was No. 4'A' situated in Kariene market.

In her affidavit in support of her application for revocation Lucy stated:-

"5. That the death gratuity has already been paid to me and I have kept it safely as per the confirmed grant issued on 14th October 2002.

6. That after the said grant was issued and subsequently confirmed, I came to learn that my late husband used to own plot No. 4'A' situated at Kariene Market.

7. That the said plot is registered in the names of my husband and his father, one M'Ikigu M'Muthuri now deceased.

8. That I have duly paid the necessary plot rent to the Council of Meru Central to safeguard the interest of my late husband's estate in the said plot.

9. That as the court can note, I paid rent for the said plot after the grant was confirmed."

The court granted the payers sought by Lucy which was to the effect that the confirmed grant be rectified to include in the schedule plot No. 4'A' situated in Kariene Market. The rectification of the grant provoked the filing of the summons dated 27th February 2009 which is the subject of this ruling.

That summon was filed by Rose Kambura M'Ikiugu and Stella Kanugu M'Ikiugu. It is brought under section 76 of The Law of Succession Act. It seeks for the revocation of the grant issued hereof on 16th October 2008 which included

the aforesaid plot No. 4'A'. Both applicants in that summons describe themselves as widows of M'Ikiugu M'Muthuri who was father to the deceased in this estate.

Rose Kambura was the mother of the deceased John Muthee Kiugu to whose estate this succession relates. The applicants deposed that plot No. 4 "A" was registered in both the names of their deceased husband M'Ikiugu M'Muthuri and the deceased hereof. The applicants annexed a minute of the County Council Meru Town planning and markets committee of 19th November 2008. The pertinent parts of that minute are:-

"Applicant: Lucy K. Ikiara

Application purpose: For permission to change the

Ownership of her plot No. 4'A'

Kariene market to Lucy K.

Ikiara and Denis Koome

M'Ikiugu M'Muthuri Ref.

Succession Cause No. 1/2002

.....was approved."

The applicants stated that the petitioner, Lucy Ikiara, their daughter in law, knew that plot No. 4'A' was registered in two names of persons who are deceased and by having the grant rectified she alienated the half portion of that plot owned by M'Ikiugu M'Muthuri deceased. That by that rectified grant, the petitioner had disinherited the applicants. In reply, Lucy stated, amongst other things, that the 1st applicant disclosed to her that the applicant's late husband had registered plot No. 4'A' jointly in his name and the name of the deceased herein. That she further told her that the applicant's late husband had no interest in the said plot but had his name registered jointly with the deceased to ensure that the deceased did not sell the plot.

That the applicant's late husband had registered other properties in his name jointly with his other sons to ensure that they too did not sell them. Lucy further deposed that she informed the 1st applicant of her intention to have the grant rectified and the said applicant did not raise any objection. In filing the application for revocation, the applicants relied on limited grant of letters of administration issued to both of them in respect the estate of M'Ikiugu M'Muthuri the deceased. That grant was limited to the purpose only of filing suit.

The petitioner argued that the applicants lacked *locus standi* to bring the present application. The petitioner's advocate argued that the application filed here was not a suit as authorized by the limited grant. I respond by stating that the petitioner's argument is really "*splitting of hairs*."

The limited grant in allowing the applicants to file suit for the estate of M'Ikiugu M'Muthuri envisaged applications too. To hold that the definition of suit does not include application is to narrow the definition.

The authority to file a suit allows a person so authorized to engage in action which is for the benefit of that deceased. I reject the petitioner's argument that the applicants required full grant to file the summons for revocation. The petitioner also opposed the application on the basis that it contravened Rule 44 of the Probate and Administration Rules.

Counsel for the petitioner did not specify where the contravention was but if her argument was that the applicants failed to place the matter before the registrar for him to specify which parties ought to be served, the same is rejected. Failure to place the file before registrar is not fatal to an application for revocation. After all, as I stated earlier, the petition in P & A5 stated that she was the sole surviving beneficiary of this estate. Who else then could have served with the application for revocation?

I also reject the argument that notice of appointment on behalf of applicants can fatally affect the application. It does not go to the root of the application. But in my view, the most important issue, which the petitioner in her long and

“loaded” affidavit tried to cover up is that plot No. 4”A” was registered in the name of the deceased in this estate and in the name of the applicants’ late husband.

I reject the argument that those two persons did not hold that plot in equal shares because there is no evidence to show otherwise. The petitioner erred to have sought to rectify the grant to have the whole plot No. 4’A’ administered under this estate to the exclusion of the estate of the late husband of the applicants.

I find that the petitioner was fraudulent in making the application for rectification. Even though in her replying affidavit she attempted to show that the name of M’Ikiugu M’Muthuri the deceased was reflected in that plot, she failed to explain the application she made to the Meru County Council to have the plot registered in her name jointly with her son’s name as re-produced herein before.

In respect of the petitioner’s argument that M’Ikiugu M’Muthuri, the deceased, had intimated that he had no interest in the plot, that assertion is not supported by the records that were held by Meru County Council at the time of his death. To allow the rectified grant to remain in force would greatly prejudice the estate of M’Ikiugu M’Muthuri, the deceased.

The applicant’s application therefore does succeed. I make the following orders:-

- 1. The order of this court of 16th October 2008, rectifying the grant is hereby set aside.**
- 2. The amended grant dated 22nd October 2008 is hereby revoked.**
- 3. The changed registration over plot No. 4’A’ Kariene market reflecting the names of Lucy K. Ikiara and Dennis Koome be hereby canceled and the original registration of that plot in the names of John Muthee M’Ikiugu deceased and M’Muthuri deceased be restored.**
- 4. The costs of the summons dated 27th February 2009 shall be paid by Lucy Ikiara to Rose M’Ikiugu and Stella Kanugu M’Ikiugu.**

Dated and delivered at Meru this 23rd day of July 2009.

MARY KASANGO

JUDGE