



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
Succession Cause 547'B' of 2007

CHARLES WARUINGI KIMANI APPLICANT

versus

ALICE NDUTA KIMANI RESPONDENT

RULING

Kimani Waruingi whom I shall henceforth refer to as ‘the deceased’, died on 20th March, 1999, at the age of 65 years. He was survived by his 2nd wife and several children. His 1st wife had pre-deceased him had two sons and three daughters, while the second wife had one daughter and two sons.

Within a month of his death, his 2nd wife, ALICE NDUTA KIMANI (‘Alice’) obtained a recommendation from her local Assistant Chief at Njoro Sub-location of Kiambaa and proceeded to petition the Resident Magistrates Court at Kiambu, for the Grant of Letters to Administer the Estate of the deceased. CHARLES WARUINGI KIMANI (‘Charles’), the 1st born child of the 1st wife, was named as her co-petitioner.

The petition disclosed that the deceased had two assets, namely KIAMBAA/THIMBIGUA/3397 and KIAMBAA/THIMBIGUA/3400. Though not discussed then, it later emerged that the deceased also owned shares in Njoro Sacco Society.

After due process, the Grant was issued to the two on 28th March, 2000. Alice thereafter successfully applied for its confirmation on 19th March, 2001 and it was duly confirmed in their favour on 12th April, 2001 at which point the estate was distributed as follows:

KIAMBAA/THIMBIGUA/3400 to be registered in favour of ALICE NDUTA KIMANI

KIAMBAA/THIMBIGUA/3397 to be registered in favour of CHARLES WARUINGI KIMANI

Njoro Sacco to be shared (sic) by DENNIS WARUINGI KIMANI.

Six years later, Charles moved this Court in an application in which he sought an order for the revocation of the said Grant on the basis of the grounds that the relevant proceedings were defective; that the Grant was obtained fraudulently by making of a false statement and concealment of material facts; that it was obtained by means of untrue allegation of a fact essential in the point of law to justify and finally that the

Title Deed issued in respect of KIAMBAA/THIMBIGUA/3400, (which he now concedes had already been transferred to a third party namely Jane Wanjiru Gitau) be revoked and/or 'concealed' (sic).

He deposes that though he had agreed to petition the cause with his stepmother Alice, she moved to Court without his knowledge and thereby forged his signature. It is also his deposition that Alice did not name his siblings as beneficiaries in the cause; which in his view was a fraudulent omission, and in order to support his contention, he claims that he was in prison between 22nd December 1999 and 7th July 2006, when the above matters took place. As I discern it, his only interest appears to be that KIAMBAA/THIMBIGUA/3400, should revert back to the Estate of the deceased, so that his siblings can benefit from it.

Alice however denies that the Grant was obtained fraudulently. She deposes that Charles was aware of the process at all times especially because being the eldest son of her co-wife, he represented his siblings, while she represented the second house. She denies having forged his signature. She also deposes that KIAMBAA/THIMBIGUA/3400, has already changed hands and in the circumstances his application cannot lie.

The two refer to the following agreement, which was entered into on 20th May, 1999, originally entered into in the Kikuyu language and which having been duly translated into English, reads as follows :

“AGREEMENT BETWEEN Mrs. Alice Nduta Kimani & Mr. Charles Waruingi Kimani

RE: LAND (PLOT)

We the above named persons have agreed because of the death of our father (Kimani Waruingi) Burial Permit No. 959701 we shall join hand together to file succession proceedings.

Our father had two plots one near the road belongs to Charles Waruingi Kimani and the other one is for Alice Nduta Kimani.

ALICE NDUTA KIMANI SIGNED

CHARLES WARUINGI KIMANI SIGNED

SECRETARY-DENIS WARUINGI KIMANI..... SIGNED

WITNESSES

1. JOSEPH GUCUMA IKANG’U SIGNED

2. JOSEPH NJOROGE WARUINGI SIGNED

3. GEORGE NDUNGU MUBEA SIGNED

4. VIRGINIA GATHONI KIMANI SIGNED

INTERPRETATION DULY CONFIRMED BY CHARLES WARUINGI KIMANI”

A look at the pleadings reveals that documents pertaining thereto were executed by two who did so in their capacities as 'widow and son' of the deceased respectively. Alice does not deny having executed the documents.

Even to the most inexperienced eye, the signatures, which he denies and which appear on all the forms in support of the petition, and those that appear on his pleadings in this cause are clearly identical and in my humble opinion, Charles would thus be hard pressed to deny that he executed them. It is also evident that all the documents in support of the petition were executed firstly by Charles and then thumb-printed by

Alice in the presence of one J.B. Chakava Advocate, who thereafter certified that he, had explained the contents of each of the documents to Alice.

As if that is not all, his step brother, Denis Waruingi Kimani has deposed to the effect that he was present when the above agreement was made also when Charles executed all the documents pertaining to the petition in this cause. He also deposes, that Charles was only imprisoned after he had executed the documents. This fact has not been controverted.

Given the circumstances, Alice cannot be accused of having forged his signature.

Be that as it may, there exists the above agreement whose terms are very clear. The fact that the two entered into the said agreement was supported by one Virginia Gathoni Kimani, George Ndungu Mubea and Joseph Mbugua who were present at the time when it was reduced into writing. In any event Alice and Charles acknowledge that agreement, which they have coincidentally annexed it to their affidavits in this cause.

In view of the above I find this application lacks in merit and that Charles has not made out a sufficient cause to warrant granting him the orders which he seeks.

I dismiss it with costs.

Dated and delivered at Nairobi this 17th day of July 2008

JEANNE GACHECHE

Judge

Delivered in the presence of: