



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
Succession Cause 2766 of 2001

VIRGINIA MUTHONI.....PETITIONER/ APPLICANT

V E R S U S

STELLA WANGECI NGAMITHI..... OBJECTOR/ RESPONDENT

R U L I N G

STELLA WANGECI NGAMITHI filed this summons for revocation of grant of letters of Administration that was issued on 4th January 2002 and confirmed on 12th November 2002 to Virginia Muthoni on the following grounds:

- a) Failure of the Petitioner to disclose to the court that the Applicant was the deceased second wife who also survived the deceased with her six children.
- b) The procedure of obtaining the grant was defective and fraudulent for failure to disclose the rightful heirs of the deceased and by giving false sworn information.

In addition to the supporting affidavit the Applicant gave oral evidence and produced a number of documents as exhibits to support her case. According to the Applicant, she married the deceased herein in 1980 and they have five children. She produced the original birth certificates for the following children.

- 1) Joyce Waithera born on 2nd November 1987
- 2) Cecily Wanjiru born on 28th November 1989 and
- 3) Susan Kariuki born on 29th February 1997.

Although these certificates were obtained on 23rd September 2003 it is clear from the said certificates that the name of the informant was the mid wife from the Embu Hospital and the births were registered on 25th November 1987 in respect of Joyce Waithera, on 29th December 1989 in respect of Cecily Wanjiru and 25th March 1998 in respect of Susan Kariuki, respectively.

The name of the father of the children is indicated as Silas Ngamithi Kathei. The Applicant also produced a letter from the Area Chief Dated 23rd December 2002 whereby she is introduced as the second wife of the deceased. The Applicant was also in possession of the deceased original documents such as the original land title for a parcel known as Gaturi Githiniu No 362, the burial permit of the deceased as well as the hospital invoices in respect of the deceased hospitalization which she claimed came to her possession as the widow of the deceased. She produced several photographs taken with the

deceased and the most remarkable of the photographs was the one taken during the funeral of the deceased whereby she was photographed with the Petitioner as she claims they posed for the photo sessions as the widows of the deceased.

The other evidence that was produced was a will allegedly written by the deceased on 29th October 1998, whereby the Applicant is recognized as the widow of the deceased and that the deceased made several bequests in her favour. This application was made on the basis that the deceased died interstate and since the Applicant on her part did not set out to propound the said will by calling the witnesses who witnessed the same, I will not place a lot of emphasize on the said will save to mention that if indeed the said will it was written by the deceased, he therefore had recognized the Applicant as his second wife.

The other matter worth of mention were the certified copies of proceedings that took place before the District Land Tribunal on 14th July 2004. The Petitioner with her three daughters had filed a case against several Defendants who had purchased land parcel Nos. 1149, 2349, 2352, 2353, 3097, 3098 and 1011 from the deceased. The Petitioner has mentioned the Applicant as the second wife of the deceased especially the statement of the petitioner which states,

“I got married to the late Ngamithi in 1963 and lived with him until he died. In 1980 he brought home another woman Stella Wangechi. He had also bought a land which was left with the younger wife”

The evidence of the petition’s daughter Mary Ngamithi is worthy of mention especially the statement that states,

“Our father had another woman he was living with. Her name is Stella Wangechi and she was given her own parcel of land. The whole piece was subdivided equally between her and our mother but is was only our mother’s portion which was allegedly transferred to the Defendants”

On the other hand the petitioner defended her grant of Letter of Administration. She claimed that she got married to the deceased n 8th June 1963 through a church ceremony and was issued with a marriage certificate No.174129. According to the said certificate the parties were married according to the customary law but registered their marriage at St Mathews Church.

They have three daughters who are named in the petition namely :-

Mary Mutitu aged 38 years

Jane Wangeci aged 32 years

Eunice Wanjiru aged 27 years.

The petitioner gave evidence in support of her case and relied on the evidence of her three daughters. They also swore affidavits in support and in objection to the Applicant prayers. The Petitioner and her daughters were categorical in their denial that the Applicant was married to the deceased for reasons that the Applicant did not produce only evidence to show that the deceased performed any ceremonies of marriage pertaining to a customary marriage.

The gist of their evidence is that the Applicant is an imposter, where children especially the 1st three children could not have been sired by the deceased. Furthermore the deceased never introduced the Applicant to the petitioner and her children as the second wife.

As regard the documentary evidence produced, the petitioner and her daughters dismissed them as mere fabrication as the photographs were taken at the funeral when the Applicant imposed herself. The birth certificate, do not prove that the deceased was the father of the Applicant's children.

I had the opportunity to listen to the Petitioner and it is important that I mention the Petitioner displayed a cynical demeanor that was extremely arrogant and co-descending on the part of the Applicant. This is not surprising if there has been long running rivalry that is depicted in the Tribunal Proceedings.

I have carefully considered the material that was placed before me by both parties, It is clear from the evidence before me that the deceased lived with the Applicant from 1980 and this fact was within the Petitioner's knowledge even when she applied for the Letters of Administration. This is also borne out of the proceedings before the clan elders and the District Land Tribunal. The law of Succession Cap. 160 is clear especially Act 10 of 1981 the Amendment that provides:-

“Notwithstanding the provision of any other written law, a woman married under a system of law which permits polygamy is where her husband her contracts a previous or subsequent monogamous marriage to another woman, nevertheless is wife for the purpose of this Act, and in particular sections 29 and 40 thereof and her children are accordingly children within the meaning of this Act”

It is not worthy that the Petitioner was married through a church wedding by converting their customary marriage to a monogamous union. That position is changed by the fact that the deceased subsequently married another wife. The issue of marriage was contested by the Petitioner but in my view there was no evidence to prove that there was no marriage. The Applicant discharged her burden and with her evidence I am satisfied that they lived with the deceased as a wife and they had children and she was even given some property. I do not think that the mere denial by the Petitioner of the evidence of the Applicant which is not supported by any evidence is enough for me to throw out the Applicant's claim when there is evidence to show (from Petitioner and her children) that they lived with the deceased from 1980. Throwing out the Applicant when she lived with the deceased for almost 20 years believing she was a wife would be unconscionable and unfair to her and the children. After all as stated earlier the Petitioner was less than candid in her evidence especially considering that she admitted before the Tribunal the existence of the Applicant.

In view of the above analysis I came to the inescapable that the grant was issued to the petitioner irregularly as there was material non- disclosure of crucial information.

Accordingly I hereby revoke grant issued and confirmed on 12th November 2002 and subsequently amended on 30th April 2003 and at the consequential transactions effected pursuant to the said grant.

In the interest of justice I hereby direct that another grant be issued to be the Petitioner and Applicant who shall be at liberty to apply for the confirmation of the Grant. In respect of the deceased estate either jointly or singularly. For the avoidance of doubt the deceased estate should be distributed in accordance with the provisions of section 40 of the law of Law of Succession.

This being a family matter let each party bear their own costs.

It is so ordered.

Ruling read and signed on 20th January 2006.

M Koome

Judge