

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

SUCCESSION CAUSE 134 OF 2002

JOYCE WANGARI KAMAU.....OBJECTOR

VERSUS

GRACE WANGECHI KAGIRI.....PETITIONER

JUDGMENT

Nyambura Kariuki (*hereinafter referred to as the deceased*) died on the 22nd of October 1999 at Subukia Tendeno Kericho District. On the 26th of March 2002 Grace Wangechi Kagiri (*hereinafter referred to as the petitioner*), the daughter of the deceased made an application for letters of administration for the estate of the deceased. In the said letter of administration she listed the beneficiaries of the deceased as herself, Mrs Wambui Kimani and Mrs Wairimu Karenju. She listed the properties of the deceased as Bahati/Kabatini Block 1/902, Kericho/Sorget/Sorget Block 1/191 and Plot No. 199 Chegeya Settlement Scheme. The letters of administration were issued to the petitioner on the 3rd of July 2002 and were confirmed on the 10th of March 2003. Soon thereafter Joyce Wangari Kamau (*hereinafter referred to as the objector*) made an application under the provisions of **Section 76 of the Law of Succession Act** seeking to have the said letters of administration revoked for the reasons that the said grant was obtained fraudulently by the petitioner making false statements and concealing material facts from the court. She stated that the petitioner had failed to disclose the fact that parcel No. Bahati/Kabatini Block 1/902 (*hereinafter referred to as the suit land*) belonged her. In the affidavit in support of the application, the objector deponed that she had resided on the suit land for over twenty five years as a beneficiary of the deceased and therefore was entitled to inherit the same. Directions were taken and this court ordered that the objection proceedings be heard by way of the parties to this succession proceedings adducing *viva voce* evidence.

The petitioner called two witnesses in support of her case. The petitioner testified that the deceased was her mother and was the only wife of Kariuki Ngini who died in 1974. His death certificate was produced as petitioner's exhibit No. 1. She testified that her mother obtained the grant of letters of administration to the estate of their late father which letters of administration were confirmed on the 7th of November 1990 (*i.e. Nakuru HC Succ Cause No. 258 of 1989*). She further testified that the suit land was owned by their late father and was inherited by their mother when the said letters of administration were issued to her. (*Letters of administration produced as petitioner's exhibit No. 2*). She testified that the suit land measured 1³/₄ acres. When their mother died the properties comprising her estate were distributed to the three daughters of the deceased namely the petitioner, Wambui Kimani and Wairimu Karenju. The petitioner inherited the suit land and was issued with a title in respect of the same which she produced as petitioner's exhibit No. 5. The letters of administration which were confirmed to her were produced as petitioner's exhibit No. 4.

She further testified that the objector in this case had leased the suit land from her between the years 1999 and 2000 at the agreed consideration of Kshs 3,000 per annum. In the year 2001, she leased the land to one Baba Wachira. In 2002, when Baba Wachira sought to renew the lease, she was barred by the objector who was then residing on the suit land. The petitioner denied that she was a relative to the objector. She denied that the objector was her niece. She further denied that the objector had resided on the suit land for a period of over twenty five years. The petitioner denied that the objector was related to her through the relatives of her deceased father.

PW2 Peter Kagiri Githongo, the husband of the petitioner, testified that the deceased inherited the suit

land in 1991. He testified that when he was sent to the suit land by the deceased in 1993, he found the objector residing therein having been given permission by the deceased. In 1995 and 1996 his daughter called Mary Wanjiru cultivated the land. The suit land was however hired out to the objector between the years 1999 and 2000. In 2001, the land was hired out to one Wachira. However in 2002, the objector barred the said Wachira from the land claiming that she owned the land. He denied that the objector was in any way related to the petitioner, since the objector even did not bother to attend the funeral of either the father of the petitioner or the deceased. PW2 reiterated that the objector first occupied the suit land in 1991 when she was granted permission by the deceased. The petitioner then closed her case.

The objector, Grace Wangari Kamau testified that the deceased was her aunt. Her mother was called Nancy Wangoi. Her father was called Chege. She testified that the deceased was a sister to her mother. She went on and testified that the father of her mother and the father of the deceased were brothers. It was her testimony that the deceased left her the suit land in 1975 when she authorized her to go to the offices of Ndeffo Company to be shown the suit land. It was her testimony that the deceased, who was a member of Ndeffo Company, was not interested in the suit land and had authorized her to take possession of the land. It was her further testimony that she took possession of the suit land in 1975 and has been residing therein since 1975. She had constructed houses on the suit land and was residing therein with her children. She testified that in the year 2001, the daughters of the deceased told her to vacate the land because they wanted to sell it. She did not agree to vacate the land because in her view as a relative to the deceased, and having occupied the parcel of land for the said period, she was entitled to inherit the same. She denied that she had ever leased the land from the petitioner. She testified that she was not aware that the deceased had been issued with the title to the suit land on the 23rd of October 1991. She conceded that although the deceased was her aunt she did not attend her funeral because she was aware that the deceased had passed away. She further testified that she had paid Kshs 500/= in respect of the suit land to Ndeffo Company in 1976. She could not however produce the receipt because she claimed that the receipt was washed with her clothes. She admitted that she had filed **Succession Cause No. 297 of 2001** in respect of the deceased's estate but withdrew the same when she learnt that the petitioners had filed these succession proceedings.

The objector called two other witnesses. DW2 Nancy Wangoi, the mother of the objector, testified that the deceased was the daughter of the son of her father's younger brother called Kaimithi. She testified that the father of the deceased was called Gatheru. It was her testimony that the objector had resided on the suit land with her children for a long time after the said parcel of land was given to her by Kariuki. She testified that Kariuki had given the land to the objector in appreciation of the fact that DW2 had brought up the said Kariuki. DW3 Joseph Michael Kingori, a former secretary of Ndeffo Company testified that the suit land was originally registered in the name of Kariuki Ngini. He testified that he did not see the said Kariuki Ngini though he knew him as a member of Ndeffo Company. When the suit land was allocated, he testified that the objector went to the offices of Ndeffo Company with a share certificate No. 1728 in the name of the said Kariuki Ngini and requested the company to show her the suit land. A director of the company called Chege Njuguna, who is now deceased, showed the objector the suit land which she occupied. DW2 was however categorical that he was not testifying as to the ownership of the suit land but his testimony limited to the circumstances under which the objector took possession of the suit land. He further testified that the objector paid the sum of Kshs 500/= which was the amount demanded when the share capital was increased by Ndeffo Company. He however conceded that the receipt was issued in the name of Kariuki Ngini.

I have carefully considered the evidence adduced by the petitioner and that which was offered by the objector. The issue for determination by this court is whether the objector has established to the required standard of proof on a balance of probabilities that she is a beneficiary or a dependant to the deceased's estate. According to the objector's evidence, the deceased was her aunt. She testified that the deceased was the sister to her mother Nancy Wangoi. It was her testimony that the deceased's father and her mother's father were brothers. She testified that the deceased had given her permission to occupy the suit land because she was not interested in the land. DW2 Nancy Wangoi, the mother of the objector testified that the deceased was the daughter of the son to the younger brother of her father. She testified that her father was called Kaimithi while the father of the deceased was called Gatheru. The evidence by the objector is however contradicted by the evidence of the petitioner who testified that she was not related in

any way with the objector. She denied that the objector was in any way related to the deceased through her father.

I have evaluated this evidence and I am of the view that the objector has not satisfied this court that she was related to the deceased. Her testimony and that of her mother are contradictory. Whereas the objector claims that the father of the deceased and her maternal grandfather were fathers, her mother (DW2) testified that the deceased was the daughter to the son of her father's younger brother called Gatheru. It is inconceivable that a mother and daughter could not know the relationship that exists between two people. In my view, the evidence of the existence of the said relationship was contrived by the objector in her bid to establish a link between herself and the deceased. In that quest, the objector has failed miserably. The petitioner testified that she is not related to the objector. I observed her demeanour in court, and I believed her testimony to be truthful.

Further, the objector did not establish that she took possession of the suit land in a different capacity other than as a lessee to the deceased. Her testimony that she took occupation of the suit land in 1975 was not supported by any evidence. At that time the suit land was owned by Kariuki Ngini who was the husband of the deceased. Even if this court were to accept that the objector was related to the deceased, she has not established that she had any connection with the deceased's husband Kariuki Ngini under whose name the land was registered by the Ndeffo Company. Further, when the said Kariuki Ngini died and the deceased obtained letters of administration to his estate in 1990, the objector did not challenge the grant of the said letters of administration to the deceased.

Subsequently thereafter the deceased obtained the title to the suit land which upon her death was inherited by the petitioner. PW2 testified that the objector leased the suit land, first from the deceased, and later from himself. The evidence of PW2 is credible as to the circumstances under which the objector came to occupy the suit land. I therefore hold that the objector's contention that she had occupied the said parcel of land after the same was given to her by the deceased, is not supported by any evidence. I therefore find that she is not a beneficiary to the deceased's estate and is therefore not entitled to inherit the said parcel of land.

Further according to **Section 29 of the Law of Succession Act**, the objector does not qualify to be considered as a dependant of the deceased. This is because she is neither a daughter, step-daughter, sister nor half sister to the deceased. She is not a creditor to the deceased's estate as provided by **Section 66 of the Law of Succession Act**. For all intents and purposes, the objector developed designs on the suit land once the petitioner indicated that she intended to sell the suit land. The petitioner was lawfully registered as the owner of the suit land after the succession proceedings which declared her to be the beneficiary of the deceased in respect of the said parcel of land. I find no merit in the objector's objection to the grant of letters of administration to the petitioner. She is a stranger to the deceased's estate. Her objection is hereby dismissed with costs to the petitioner.

DATED at NAKURU this 31st day of May 2006.

L. KIMARU

JUDGE