



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MERU
Succession Cause 172 of 1992

IN THE MATTER OF THE ESTATE OF STANLEY MUGAA M'NGUTHARI (DECEASED)

JOYCE KANANU MUGAA PETITIONER/APPLICANT

and

COSMAS BAITUBA OBJECTOR/RESPONDENT

RULING

This is a sad matter as I will demonstrate shortly. The petitioner in this cause is the widow to Stanley Mugaa M'Nguthari (the deceased). After his death the petitioner brought this cause for grant of representation on 28th September, 1992 and from that date she has been tossed between the court, the District Officer, Njuri Ncheke and back to court, all courtesy of the objector, Cosmas Baituiba.

The objector has been claiming that he is entitled to the deceased person's estate by reason of being his brother. He has also pegged his claim to the estate of the deceased on a finding by the Njuri Ncheke.

He is now seeking that a grant issued to the petitioner be revoked on the grounds that the petition was filed secretly without his consent and further that the grant was obtained by the petitioner making false statement and/or concealing from the court material facts.

He also argues that he is entitled to the estate and that if the grant is not revoked he stands to suffer irreparable damage. The petitioner in her reply denies any relationship between the deceased and the objector. She laments however, that the origin of her woes is the objector's determination to inherit her by whatever means, in order to qualify to also inherit the estate of the deceased.

I have anxiously and with deep sympathy to the petitioner considered these arguments. A grant will be revoked if:-

- (a) the proceedings to obtain it were defective in substance
- (b) it was obtained fraudulently by making a false statement or concealment from the court of something material to the case
- (c) it was obtained by means of an untrue allegation of fact essential in point of law.
- (d) the person to whom the grant was made has failed to apply for confirmation within 1 year; failed to

administer the estate diligently; failed to produce to the court an inventory when ordered to do so.

(e) the grant has become useless and inoperative.

The application is based on all the above grounds, except ground (e).

It is alleged that the petitioner in obtaining the grant did not involve all beneficiaries, especially, the objector. It is also alleged that the petitioner forged the objector's signature to mislead the court that he had given consent to file the cause.

The application is also based on the ground that the petitioner is in the process of disposing of the estate and that she intends to distribute the estate to her son, not sired by the deceased against the latter's wish. All these grounds are denied by the petitioner who maintains that although the objector is not entitled to the deceased's estate, he was all through aware that the petitioner had filed this cause and has participated in the dispute before the D. O, Njuri Ncheke and in court. With respect I agree.

First and foremost the objector was not entitled to be involved in the filing of this cause. His relationship with the deceased is shrouded in mystery. From the proceedings before the D.O it is said that he was taken to the deceased's home where certain traditional rites were performed, I suppose, to bond him with the deceased. It is not clear what relationship this ritual established.

But even assuming that he is a brother to the deceased, he cannot rank at par with the deceased's wife unless he can prove the existence of a trust in respect of any of the properties.

The objector cannot claim that the cause was filed secretly when he has participated in it all along. As a matter of fact, and this is the part, his dishonesty has been clearly displayed, he was present before this court (Sitati, J) on 14th February, 2005 when he confirmed a consent which was recorded, in effect, paving way for the grant to be confirmed in favour of the petitioner. This was done on 18th February, 2005.

I am convinced from the record that the objector's main interest, is not the real estate of the deceased but his widow. As a result of his lascivious disposition he has subjected the petitioner to agony for many years. This must be brought to a decisive end now and the objector be told in uncertain terms that there is no room in today's society for parasites.

The objector must look elsewhere as the estate of the deceased is now in the hands of the petitioner who is free to deal with it in any manner she pleases. May I also say finally that in matters of succession elders or Njuri Ncheke cannot distribute the deceased's estate.

This application fails and is dismissed with costs to the petitioner.

DATED AND DELIVERED AT MERU THIS 20TH DAY OF JULY, 2006

W. OUKO

JUDGE