



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO.97 OF 2001

IN THE MATTER OF THE ESTATE OF WANGARI NGETHE (DECEASED)

MARY WAIRIMU NDUNGUOBJECTOR/APPLICANT

VERSUS

NJENGA NGETHE }

LEAH WANJIRU KAMUYU }.....ADMINISTRATORS/RESPONDENTS

RULING

On 17.03.05 Mary Wairimu Ndungu the objector filed, in person, summons applying for the following orders:-

1. That the grant of letters of administration issued to Njegna Ngethe and Leah Wanjiru Kamuyu the administrators/respondents on 06.04.01 and confirmed on 16.09.02 be revoked and/or annulled.
2. That costs of the application be provided for.

The application is supported by the objector's/applicant's affidavit sworn on 17.03.05. The purport of her affidavit may be summed up as under. The deceased Wangari Ngethe was her mother who died intestate on 25.01.93 and the two administrators/respondents herein petitioned for and were issued with letters of administration of the deceased's estate. It is the objector's evidence that the two administrators are not the rightful persons to administer the deceased's estate since they are not immediate family members of the deceased and that she (objector) ranks first in the line of administration. The objector also deposed that the first administrator Njenga Ngehte, who subsequently died, alleged that he was the only son of the deceased which was false. The objector added in her deposition that the second administrator Leah Wanjiru Kamuyu is a sister-in-law of the deceased herein. According to the objector the administrators never consulted the surviving children of the deceased including herself in petitioning for letters of administration. The objector gave particulars of the deceased's surviving children as:-

- a) Mary Wairimu Ndungu (herself) – daughter to the deceased;
- b) Rose Wangui Gitau – daughter to the deceased;
- c) Nancy Wambui Mungai – daughter to the deceased; and
- d) Elizabeth Wanjiru Ndungu – daughter to the deceased.

The objector added in her affidavit that the deceased had two brothers James Njenga Ngethe and George Kamuyu Ngethe plus a sister Jane Njeri Ngethe who have since died. The objector further deposed that as at the time she filed her summons for revocation of the grant in question, the two administrators had applied for rectification of the grant which made her (objector) fearful that the said administrators wanted to sell the deceased's estate. It was the objector's case that no consents were given by the rightful beneficiaries of the deceased's estate to the issuance of the grant of letters of administration to the two administrators and that the grant to them should be revoked and instead be issued to her.

Hearing of the summons for revocation or annulment of the grant came up before me on 31.10.06 whereat the objector appeared in person while there was no appearance for the administrators/respondents. The objector reiterated the contents of her affidavit referred to above. She told the court that the second administrator Leah Wanjiru Kamuyu had been served with that day's hearing notice but she never came to court and that she (second administrator) had not been coming to court since March, 2005.

There is an affidavit of service in the file by Obadiah Mwangi, process server that on 29.09.06 he attempted to serve the second administrator/respondent Leah Wanjiru at her place of residence but the latter refused to accept service and referred him (process server) to her Advocate, one Mr Mutiso. The process server added that from there he went to Advocate Mutiso's office who accepted service but refused to sign at the back of the process server's copy of the hearing notice, claiming that he had no further instructions from the respondent.

The objector added in her affidavit that the second administrator Leah Wanjiru Kamuyu had told her that she would not attend court because she did not take the subject 'shamba' (land) rightfully. She (objector) said in her oral evidence that the second administrator Leah Wanjiru Kamuyu is her sister-in-law, having been married to the objector's younger brother (last born). The objector urged the court to revoke the grant to the two administrators and issue it to her instead so that she can administer the deceased's estate equitably. She said she became aware in 2004 that the grant of the two administrators had been confirmed.

Rose Wangui Gitau, a sister to the objector also gave evidence before me in support of the objector's summons for revocation of the subject grant.

I have duly considered the objector's summons for revocation of the grant in question.

I note that in her affidavit the objector described the second administrator Leah Wanjiru Kamuyu as a sister-in-law of the deceased herein while in her (objector's) oral evidence she described the said second administrator as her own sister-in-law, she having been married to her (objector's) younger brother. I take it that the objector got mixed up in her terminology while describing the second administrator and I take the latter description of the second administrator as her (objector's) sister-in-law to reflect the correct position, i.e. the second administrator is the deceased's daughter-in-law.

I accept the evidence that the first administrator Njenga Ngethe is dead and that the second administrator Leah Wanjiru Kamuyu was duly served but failed to attend court for the hearing of the objector's summons for revocation of the subject grant. I also accept that the two administrators, while petitioning for letters of administration, did not consult the objector and her surviving sisters. I see from the affidavit in support of the petition for letters of administration sworn by the administrators on 25.10.2000 that the names of the objector and her siblings did not feature among those who survived the deceased.

The facts disclosed by the evidence availed to court establish that the grant to the two administrators was obtained fraudulently by the making of a false statement or by the concealment from the court of something material to the case, contrary to section 76 (b) of the Law of Succession Act, Cap.160. Accordingly, the grant issued on 06.04.01 and confirmed on 16.09.02 to the administrators Njenga Ngethe and Leah Wanjiru Kamuyu is hereby revoked and the same issued to the objector MARY WAIRIMU NDUNGU to administer and distribute the deceased's estate to all rightful beneficiaries equitably. Costs shall be in the cause.

Orders accordingly.

Delivered at Nairobi this 21st day of November, 2006.

B.P. KUBO

JUDGE