



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI (NAIROBI LAW COURTS)

Succession Cause 2493 of 2003

IN THE MATTER OF THE ESTATE OF NYANJUI KUNGU (DECEASED)

TABITHA NYAMBURA GITHU.....1ST OBJECTOR/APPLICANT

STEPHEN KUNGU NYANJUI..... 2ND OBJECTOR/APPLICANT

VERSUS

RUTH WANGUI NYANJUI.....PETITIONER/RESPONDENT

RULING

By summons dated 19.06.06 and filed on 20.06.06 brought under sections 76 and 83 of the Law of Succession Act, Cap.160 and rules 44 and 73 of the Probate and Administration Rules, the objectors/applicants prayed for the following orders:-

- a) That the summons be certified urgent and be heard ex-parte in the first instance.
- b) That pending the hearing and determination of the summons this court do issue inhibitions to dealings with land parcels known as $\frac{3}{4}$
CHANIA/KANYONI/2625, CHANIA/KANYONI/2626,
CHANIA/KANYONI/2627, CHANIA/KANYONI/2628,
CHANIA/KANYONI/2629, CHANIA/KANYONI/2630 and CHANIA/KANYONI/2631.
- c) That pending hearing and determination of the application, the petitioner RUTH WANGUI NYANJUI, MONICA NJERI NYANJUI, MARY WANJIRU MBUGUA, VIRGINIA WANGARI NYANJUI, MARGARET WANJIKU NYANJUI and TERESIA WAIRIMU NYANJUI by themselves or agents be restrained from evicting or in any other way interfering with the objectors' use of the parcels of land described in (b) above.
- d) That the letters of administration to RUTH WANGUI NYANJUI made on the 02.07.02 and confirmed on 09.04.03 be revoked or annulled.
- e) That the parcels of land listed in (b) above which are all resultant parcels of subdivision of CHANIA/KANYONI/523 which was registered in the name of the deceased be deemed to still form part

of the estate of the deceased.

f) That costs be borne by the petitioner.

The grounds upon which the application for revocation of grant is based are:-

1. That the objectors are 2nd wife and son of the deceased, respectively.
2. That the petitioner has not administered the estate as per the grant.
3. That the petitioner has acted fraudulently and illegally.
4. That the petitioner's actions are meant to disinherit the objectors.
5. That the objectors are now threatened with eviction.

The application is supported by the joint affidavit of the objectors/applicants sworn on 19.06.06.

At the hearing of the application, the objectors/applicants were represented by learned counsel, Mr K.G. Runo while there was no appearance for the respondents.

An affidavit of service by Carlos Wambua Mutinda, process server sworn on 26.06.06 deposes that on 21.06.06 he served the objectors/applicants' summons dated 19.06.06 for revocation of the grant in question upon the respondents RUTH WANGUI NYANJUI, Monica Njeri Nyanjui, Mary Wanjiru Mbugua, Virginia Wangari Nyanjui, Margaret Wanjiku Nyanjui and Teresia Wairimu Nyanjui and that the respondents accepted service but refused to sign the process server's copies. It was the process server's deposition that the copy of summons for revocation served on the respondents stipulated the hearing date thereof as 04.07.06. The Court record relating to hearing date erroneously reflects the said date as 03.07.06 but the correct position is that the summons for revocation in this cause came up for hearing on 04.07.06 as the cause list for that day shows. The respondents did not appear either in person or through counsel. I infer from the respondents' non-appearance at the hearing of the summons for revocation that they had no answer to the summons.

The certificate of confirmation of the subject grant shows that Tabitha Nyambura Githu (1st objector/applicant) and Stephen Kungu Nyanjui (2nd objector/applicant) were allocated part of the deceased's landed estate. However, the objectors/applicants have deposed vide paragraph 6 of their joint affidavit in support of the summons for revocation of grant that the administrator RUTH WANGUI NYANJUI has since subdivided the deceased's landed estate to herself and other people to the exclusion of the objectors/applicants. That is clearly fraudulent and illegal as averred by the objectors/applicants. The administratrix, RUTH WANGUI NYANJUI should be thoroughly ashamed of herself.

The summons dated 19.06.06 for revocation of the grant of letters of administration to RUTH WANGUI NYANJUI on 02.07.02 and confirmed on 09.04.03 is hereby revoked as per prayer (d). All the parcels of land resulting from subdivision of CHANIA/KANYONI/523 which was registered in the name of the deceased are deemed to still form part of the deceased's estate as per prayer (e). The petitioner/administratrix, RUTH WANGUI NYANJUI shall bear the objectors'/applicants' costs of the summons as per prayer (f).

Orders accordingly.

Delivered at Nairobi this 6th day of November, 2006.

B.P. KUBO

JUDGE