



REPUBLIC OF KENYA

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

Succession Cause 1375 of 1990

IN THE MATTER OF THE ESTATE OF NG'ANG'A KAMAU (DECEASED)

RULING

The records show that a Grant of Letters of Administration to the deceased's estate was issued to one Ronald Mwenda Ng'ang'a, who described himself as a son of the deceased in form P&A 5. He disclosed the names of 2 other sons of the deceased who had died by the time the deceased died. The Grant was confirmed on 25th September 1991. He distributed the property known as L.R No. LOC. KIGORO/83 to himself wholly, as per the Certificate of Confirmation.

One Joyce Wanjiku moved the court to revoke and or annul the Grant of Letters of administration issued to Ronald Mwenda Ng'ang'a and duly confirmed.

In the affidavit supporting the Summons for Revocation, Joyce described herself as the widow of the deceased, and lamented that she had not been notified by Ronald of the petition for Letters of Administration to her late husband's estate, and described the Grant as having been obtained by fraud as material facts were concealed from the court.

Ronald replied to the Summons for Revocation by averring that Joyce was never married to his late father, either by customary law or otherwise, and has therefore got no legal claim to the estate.

The court records show that a hearing date was taken by Messrs Kirundi and Co. Advocates for the objectors, and the same was served on Messrs Karuga Wandai, advocates for the petitioner, who accepted service by signing at the reverse of the hearing notice. This was exhibited in court.

Neither Mr. Karuga Wandai nor his client, the petitioner Ronald were present in court. Counsel for the objector requested that his client be allowed to proceed with the hearing of the Summons for Revocation, and I allowed her to do so.

The objector, Joyce Wanjiku confirmed the contents of her affidavit in support of Summons for Revocation, and asserted that she was married to the deceased in 1984 and they had 2 children. That the marriage was under Kikuyu customary law, and was contracted after the deceased's first wife had died, leaving behind a son Ronald Mwenda Ng'ang'a, who had left the home and was living in Nyandarua. The objector asked for Roland to be brought back home and this was done in 1985.

The deceased died in 1985. She produced the death certificate as Exh. 1.

The objector testified that the deceased paid dowry to her father and she called a witness who was present as this was done.

She was married to the deceased from 1984 – 1990, when the deceased died out of an illness.

Of her 2 children, the 2nd born was named Kamau, after the deceased's father and the 1st born, Muthoni, after the deceased's mother. This was in line with Kikuyu customs of naming children.

The objector lived with the deceased in Kariara village, Gatanga Division of Thika District, but she does not live there anymore, because Ronald chased her, and she reported to Githumi police station and Ronald was arrested and taken to court. The objector gave evidence in that case, but subsequently forgave Ronald. They were both summoned by the Chief. She went but Ronald refused to appear before the Chief; who finally referred the matter to the D.O. who directed that the land be sub-divided into two.

The objector complained further that Ronald chased her from the home and even occupied her house, as he has not built one himself. She prayed the court to order the subdivision of the land between her and Ronald.

Peter Mureu, comes from Gatanga village, Kigumo division, and knows the objector. He also knew the objector's husband, the late Ng'ang'a Kamau, who was of the same clan as himself "the angare clan from Timba House".

Peter confirmed that the late Ng'ang'a Kamau had 2 wives but the 1st one, called Wairimu died before he married the objector as the 2nd wife. That Wairimu had 4 children, but 3 died leaving only one called Ronald Mwenda.

The witness confirmed that he accompanied the deceased and 4 others as they went to visit the parents of Joyce, the objector. They took 2 goats and Kshs.6,000/=, as dowry. That in accordance with traditions, the goats were slaughtered in Joyce's home, and this signified that Joyce was now a wife of the deceased, however, Ng'ang'a died before Ngurario ceremony was performed, but Joyce was considered a wife because the traditional goat had been slaughtered in her father's home, and also traditional beer had been prepared by the deceased family to the in-laws. He therefore said emphatically, "*Joyce is a true wife of the deceased. Ronald is telling lies when he denies this.....*".

The witness confirmed that Ronald chased away Joyce from the home, despite the sub-chief ordering Joyce to remain in that home. He also confirmed that the deceased sub-divided the land into 2 before he died. He further confirmed that this matter had even gone to the D.O, but still Ronald has refused Joyce to go back to the home.

The death certificate produced as an exhibit showed that the deceased died aged 84 years old. The second exhibit produced showed that about a year after the deceased's death in 1991, the Chief of Kariara Location summoned both the objector and the petitioner to appear before the D.O's office, with their elders, to resolve the land dispute. No evidence of what went on before the D.O was produced in court.

As already stated on record, neither the petitioner nor his lawyer appeared in court to challenge the evidence of the objector, which was corroborated by a clan member of the deceased, who was one of the people who went to pay dowry to Joyce's father.

Submissions were made by the objector's counsel who also produced several decided cases, I have read and considered all of them.

From the evidence on record therefore, I am satisfied that Joyce was a wife of the deceased, married after the death of his 1st wife who was the mother of the petitioner Ronald Mwenda Ng'ang'a. Any claim to the contrary, as was made by Ronald in his replying affidavit is not true and cannot be sustained; because I believe Joyce's evidence as corroborated by the evidence of Peter, her witness.

I find that Ronald concealed material facts when he petitioned for a Grant to his late father's estate. This concealment caused injustice to Joyce, who was a wife of the deceased, and this ended in her being

disinherited from the deceased estate.

I therefore move to REVOKE the Grant of Letters of Administration issued to Ronald Mwenda Ng'ang'a on 28th February 1991 and subsequently confirmed on 25th September 1991 as the same were obtained fraudulently by concealment of the fact that Joyce was a wife of the deceased, who is entitled to both apply for the Grant and also inherit from the estate.

I direct that a fresh Grant of Letters of Administration to the deceased's estate be issued to Joyce Wanjiku jointly with Ronald Mwenda Ng'ang'a. The 2 petitioners will be at liberty to immediately apply for confirmation of the said Grant, upon compliance with the proviso to Sec. 71 of the Succession Act, in respect of the "***respective identities and shares of all persons beneficially entitled.....***"

Dated at Nairobi this 13th day of April, 2005.

JOYCE ALUOCH

JUDGE