



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI
SUCCESSION CAUSE NO. 158 OF 1998

IN THE MATTER OF THE ESTATE OF GLADWELL MUMBI

NJOROGE (DECEASED)

RULING

The applicant herein John Njoroge by way of application by summons dated 28/8/1999 seeks for the revocation of the grant granted to Margaret Rohio and Jane Tatua on 8/4/1988 for reasons that:-

- a. The proceedings to obtain the grant were defective in substance.
- b. The grant was obtained fraudulently by making of a false statement and by concealment from the court of something material to the case.
- c. The grant was obtained by means of untrue allegation of a fact substantial in point of law to justify the grant.
- d. The persons to whom the grant was made have failed to proceed diligently with administration of the estate and finally,
- e. The grant has become useless and in operative through subsequent events.

On 6/10/2003 this matter came up for further directions/or determination and the following directions were given:

- 1) Application dated 20/8/1999 and 29/12/1999 by the applicant objector be and are hereby consolidated to be heard together.
- 2) Hearing be by way of oral evidence, affidavit evidence and submissions.

The application dated 29/12/1999 seeks mainly for the amendment of Forms P&A 5 filed herein to include parcel number Kabete/Lower Kambete/885 or the resultant Subdivided parcels and parcel, number T.177 lower Kabete.

At the hearing of this application the objector presented his oral evidence and concluded. The matter was adjourned for the petitioners to record their oral evidence. During the hearing at the adjourned date the petitioners' Advocate applied for adjournment and application for adjournment was denied for reasons recorded elsewhere in these proceedings. I will therefore proceed to evaluate the evidence by way of affidavits filed herein by both parties as well as the oral evidence adduced by the applicant and all the documents filed in this succession cause. The applicant was in person and the facts extracted from his evidence includes his averments contained in his affidavit sworn on 20/8/1999 and 29/12/1999. He is the son of the deceased the late Gladwell Mumbi Njoroge who passed away on 23/5/1996. His mother was

survived by himself and his seven sisters as follows:

1. Margaret Kambui Rohio (administrator)
2. Mary Nyambura
3. Teresiah Wambui Mungo
4. Jane Wanjiku tatua (administrator)
5. Catherine Njeri Muriuki
6. Nancy Wanjiru Waweru
7. Jane Wamaitha Njonjo
8. John Njoroge (applicant)

He was not informed when the applicants applied and were granted with the letters of administration in respect of the deceased estate. His name was omitted in the application Forms P&A 5 as a survivor of the deceased. The property of the deceased where he was living with his family for 50 years was transferred without his knowledge pursuant to the grant of letters of administration issued herein. He and his family were evicted most violently and lost their properties. He was sued in another matter being Hcccc No. 1086 of 1998 allegedly for trespass of land whereby his sister Nancy Wanjiru Maura is the plaintiff. The Applicant claimed that the said proceedings were meant to evict him, disinherit and disposes him of his mother's estate. He felt that he was unfairly treated. He never signed any consent to renounce his rights as a beneficiary of the deceased's estate and in this regard he has applied for the revocation of the grant of letters of Administration made to the petitioners.

The petitioners were represented by Mr. Kinyanjui Advocate and have sworn affidavits sworn on 21/10/03, 20/8/99 and 29/12/99. The issues raised in the said affidavits are as follows:-

- i) There is no valid application before the court as the application dated 20/8/99 is not validly endorsed by the applicant or his Advocate.
- ii) The application has not been served upon the Co-Administratrix Margaret Rohio which application is in any event defective.
- iii) Parcel number Kabete/lower/kabete/885 was closed after submission by the deceased in 1991 and the same does not exist the title having been closed.
- iv) That the applicant is in contempt of this court order issued in HCC 1086 of 1998.

In evaluation of the above evidence the gist of which I have summarized and formulated the following issues for determination in my ruling:

1. Was the grant obtained fraudulently
2. Was there material non disclosure of vital information.
3. Is the application before this court valied.
4. Was the co-administratrix served with the application for revocation.
5. Is the applicant guilty of contempt of court order in HCCC NO. 1086/1998.

In answer to the questions raised in issue No. 1 and II which I will tackle seriatim, I have gone through the application/petition for the grant of letters of administration that was filed by the petitioners. I refer to Form P&A 5 paragraph 4 which reads as follows:

“The deceased died intestate and left the following surviving her:

- a) Mrs. Margaret Kabiru Rohio
- b) Mary Nyambura Njoroge
- c) Teresiah Mumbi Mugo
- d) Jane Wanjiku Tatua
- e) Catherine Njeri Muriuki
- f) Nancy Wanjiru Mwaura
- g) Janet Wamaitha Njoroge

The name of the applicant is not among the above names. It is not disputed at all in the affidavits that the applicant was a son and survivor of the deceased.

Moreover, under paragraph 6 of the same form where the inventory of the deceased assets are shown, property number Kabete/lower Kabete/885 is not included. The applicant has annexed a copy of the (green card) property section which shows there was a subdivision in 1991 when the title changed on subdivision and new numbers were issued as Nos.1163-1167 but the last registered proprietor of this property is the deceased. Did the deceased transfer the new titles or were the titles being transferred by the administratrixes?. If the transfers were effected by the administratrix, why did they fail to include these parcels of land in the schedule of deceased assets?. Does failure to include the applicant as a beneficiary/survivor of the deceased and failure to disclose all the assets of the deceased warrant the revocation of a grant. Before answering the above question, it is important to establish whether there is a valid application before the court that is duly endorsed by the applicant or his advocate. The application dated 28/8/99 seeking for the revocation of the grant is duly endorsed by Mwongela & Co. Advocates who was acting for the applicant. The second issue is whether the 2nd applicant was duly served with the application. I have seen an affidavit of service by Ema W. Kamau who purports to have effected service of the summons dated 20/8/99 to both respondents by registered post. The affidavit is sworn on 26/10/99. The grounds of preliminary opposition filed on 19/4/00 by Mr. Harrison Kinyanjui Advocate states that he was acting for the respondents.

I have not come across any notice where Mr. Kinyanjui has ceased to act for both respondents. The affidavits of Jane Wanjiku Tatua refers to information given to her by her co-administratrix. There are several affidavits of service filed on behalf of the objector where various documents have been served upon his firm on behalf of the respondents and there was no protest on his part. Even during the hearing there was no indication that Mr. Kinyanjui was not acting for both the respondents. Accordingly, I find that the summons for revocation that is before me is properly endorsed by an advocate and was served upon the respondents who were represented by an advocate. The above findings take me back to the failure by the petitioners to include the applicant as the beneficiary and I therefore refer to section 38 of the Law of Succession Cap 160 which provides and I quote:

“Where an intestate has left a surviving child or children but no spouse, the net intestate shall subject to the provisions of sections 41 and 42, devolve upon the surviving and, if there be only one or be equally divided among the surviving children.”

The probate and administration rules are equally instructive of who should be given notice. Rule 26(1) letters of administration shall not be granted to any applicant without notice to every other person entitled

in the same degrees as or in priority to the applicant.

(2) An application for a grant where the applicant is entitled in a degree equal to or more than that of any other person shall in default of remuneration, or written consent, be supported by an affidavit of the applicant and swear other evidence as the court may require.

It is obvious from the above provisions the applicant who is a son of the deceased and a beneficiary of the deceased estate ought to have been notified of the petition for him to renounce his right generally to apply for a grant or to give his consent. The applicant did not sign the consents. The consents in the file are by:

1. Teresia Wambui Mugo
2. Mary Nyambura Njoroge
3. Janet Wamaitha Njoroge
4. Nancy Wanjiru Mwaura and
5. Catherine Njeri Muriuki

The provisions of Rule 40(8) are quite clear that all the dependants or other persons who may be beneficially entitled should file their consent in writing before the confirmation of the grant.

In conclusion I find that the grant herein was made without material disclosure that the applicant was a survivor and beneficially of the deceased estate. Accordingly, I allow the summons for revocation dated 20/8/99 and order that the grant of letters of administration issued to Margaret Rohio and Jane Tatua made on 8/4/98 be and is hereby revoked. All the consequential orders and transactions effected pursuant of the said grant are hereby revoked.

I have considered the inherent powers given to this court to ensure that ends of justice are met and to prevent the abuse of the process. In this regard I have considered whether it is prudent to grant another letters of administration jointly to the applicant and the respondents so that the estate of the deceased is not left without an administrator. If the grant was rewww. kenyalawreports.or.ke 10 issued, there would be difficulties as there is tremendous acrimony between the applicant and the respondents. The list of the deceased assets are also not agreed and most importantly the petitioners acted irregularly. The application dated 29/12/99 seeks to amend the form P&A 5 to include certain properties of the deceased. In view of the above findings, the said application becomes unnecessary as the person who shall apply for the grant will include all the assets of deceased. The application dated 29/12/99 is therefore disallowed. Each person shall bear their own costs of this litigation.

Orders accordingly.

Ruling delivered on 15/12/03.

M. Koome

Judge

15/12/03

Mwaura Court clerk

John Njoroge applicant present

Ruling read and signed in the presence of applicant and in the absence of the

respondents.

M. Koome

Judge