



REPUBLIC OF KENYA



KENYA LAW
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**In re Estate of Asha Nyakiiru Miruru (Deceased) (Succession Cause
2620 of 2015) [2024] KEHC 8744 (KLR) (Family) (19 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 8744 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE 2620 OF 2015
MA ODERO, J
JULY 19, 2024**

RULING

1. Before this Court for determination is the Summons for Revocation of Grant of Probate and Consolidation of Succession Causes Numbers 669/2016, Number 2620/2015, HCPA 2763 of 2015 and 2763 of 2015 - In The Matter of The Estate of Asha Nyakiiru Miruru. The Summons was filed by the Applicants Robinson Njenga Gatherer And Susan Wanjiku Njenga sought the following orders:-
 - “1. Spent
 2. That Succession causes number 669/2016, 2620/2015 and HCPA 2763 of 2015 (In The Matter of The Estate of Asha Nyakiiru Miruru) be consolidated and heard together for purposes of efficient disposal of the matters thereof.
 3. That the grant of probate granted to Charles Waweru Gitau alias Rasta in Succession suit number 2620/2016 be revoked and the applicants herein be allowed to proceed with the petition for letters of administration as filed in this court in succession case number 669/2016.
 4. That the parties and advocates in succession cause number 2020/2015 be ordered to serve the firm of N.A. Owino And Company Advocates with all their documents filed in their respectful cases.
 5. That costs of this summons be provided for in any event.
2. The summons was premised upon Section 76 of the *Law of Succession Act*, Cap 160 Laws of Kenya, Rule 44 of the *Probate and Administration Rules* and all other enabling provisions of the law was supported by the Affidavits of even date sworn by the 1st Applicant.
3. The Respondent Charles Waweru Gitau opposed the application through the Replying Affidavit dated 10th November, 2022. The matter was canvassed by way of written submissions. The Applicants filed



the written submissions dated 6th March, 2023 whilst the Respondents opted not to file any written submissions.

Background

4. The succession cause relates to the estate of the late Asha Nyakiiru Miruru (hereinafter ‘the Deceased’) who died on 25th September, 2015. A copy of the Death Certificate Serial Number 0525748 is annexed to the Petition for Grant of Probate dated 23rd October, 2015.
5. The Deceased had never been married and had no biological children of her own. The Deceased’s father Danson Miruru Kinyanjui died on 8th August 1980 thereby predeceasing her. It is alleged that the Deceased died testate having left behind a written will dated 3rd November, 2014 in which she appointed the Respondent Charles Waweru Gitau as the Executor.
6. Following the demise of Danson Miruru Kinyanjui (the father to the Deceased herein) a Succession Cause No. 2916 of 2003 was filed in the High Court in respect of his estate. A certificate of confirmed Grant was issued to the Public Trustee on, 16th March 2011. The confirmed Grant set out the mode of distribution of the estate and Asha Nyakiiru Miruru (the Deceased herein) was included as a beneficiary of the estate (Annexure NRG 3 (a) to the Affidavit dated 2nd December, 2021)
7. The Applicants herein who are the nephew and sister to the Deceased ‘Asha Nyakiiru’ were not satisfied with the proposed mode of distribution of the estate and filed a summons for revocation of Grant dated 29th March, 2012.
8. Vide a Ruling delivered on 2nd October 2015, Hon. Justice William Musyoka made the following orders.
 - “ 1. That Dagoretti/Waithaka 264 shall not be sold or transferred pending the hearing and final disposal of the application dated 29th March 2012.
 2. That the status quo be maintained until final disposal of the application dated 29th March, 2012
 3. That the application dated 29th March, 2012 to be heard on a date to be given at the registry on priority basis”
9. A copy of said order appears as Annexure NRG 4(d) to the Supporting Affidavit.
10. Meanwhile following the demise of the Deceased herein, Asha Nyakiiru the Applicants on 10th August, 2016 filed a citation against one ‘Rasta’ whom they alleged had taken possession of all the Deceased’s documents and refused to surrender said documents to the genuine beneficiaries. The said ‘Rasta’ did not respond to the citation.
11. On 14th February 2017, Hon. Lady Justice Rose Ougo gave orders permitting the Applicants to petition for Grant of Administration in respect of the estate of the Deceased. The Applicants then filed Succession Cause No. 669 of 2016. However without the knowledge of the Applicants other parties claiming beneficial interest in the estate of the Deceased had also filed Succession No. 2620 of 2015 and HCPA 2763 of 2015 in respect of the same estate. The Applicants denounce these persons namely Joseph Kariuki Nginyi, Michael Ndungu Kamau, Daniel Njoroge as strangers to the estate. They claim that said persons are land grabbers who have forged documents purporting to transfer estate property to themselves.



12. The Applicants claim that the written will dated 3rd November, 2014 allegedly left by the Deceased in which the Respondent is named as Executor is a fraudulent document.
13. The Applicants seek to have all the files relating to this estate consolidated. They further pray to have the Grant issued to 'Rasta' in Succession Number 2620 of 2015 revoked and that they be allowed to petition for letters of Administration.
14. As stated earlier the application was opposed. The Respondent asserts that he is the duly appointed Executor of the estate of the late Asha Nyakiiru through a Grant issued to him on 8th June 2016.
15. The Respondent asserts that he applied for confirmation of the Grant vide a Summons dated 9th January 2017 but protests were filed by Joseph Kariuki Ngunyi Michael Ndungu Kairuki and Daniel Njoroge Mwaura. That Hon Justice Muchelule (as he then was) directed that the protests be heard by way of *Vive Voce* evidence to determine the validity of the will allegedly left behind by the Deceased.
16. However the Respondent avers that the hearing was delayed due to the onset of the COVID Pandemic when courts stopped sitting for a period of time.
17. The respondent opposes consolidation of the three Succession Causes as he insists that No. 2916 of 2003 does not relate to the estate of the Deceased herein but rather relates to the estate of her late father Danson Miruru Kinyanjui. The Executor claims that he cared for the Deceased for seven (7) years prior to her demise, paid her medical expenses and took her to hospital. He denies that he is a land grabber as alleged by the Applicants.
18. The Respondent urges the court to uphold the written will left behind by the Deceased and to dismiss this application.

Analysis and Determination

19. I have carefully considered the application before this court, the reply filed thereto as well as the written submissions filed by the Applicant.
20. Order 11 Rules (2) (3) of the *Civil Procedure Rules* 2010 provides for the consolidation of Suits.
21. In the Case of *Premlaca Nabata & Another v Chandni Prasad Sikaria* [2007] 2 the Supreme Court of India observed thus -

“It cannot be disputed that the court has power to consolidate suits in appropriate cases.....
The main purpose of consolidation is therefore to save costs, time and effort and to make the conduct of several actions more convenient by treating them as one action. The jurisdiction to consolidate arises where there are two or more matters or causes pending in court and it appears to the court that some common questions of law or fact arise in both or all the suits or that the rights or reliefs claimed in the suits are in respect of or arise out of the same transaction or series of transactions; or that for some other reasons it is desirable to make an order consolidating the suits”[own emphasis]

22. In *Law Society of Kenya v Center For Human Rights and Democracy & 12 Others* [2014] eKLR, the Supreme Court of Kenya held as follows:-

“The essence of consolidation is to facilitate the efficient and expeditious disposal of disputes and to provide a framework for a fair and impartial dispensation of justice to the parties. Consolidation was never intended to confer any undue advantage upon the party that seeks



it, nor was it intended to occasion any disadvantage towards the party who opposes it” [own emphasis]

23. Finally on this point in *Nyati Security Guards & Services Ltd v Municipal Council Of Mombasa* [2000] eKLR, the court set out the situations where consolidation of suits ought to be considered as follows:-
“The situations in which consolidation can be ordered include where there are two or more suits for matters pending in the same court where:-
 - a. Some common questions of law or fact arise in both or all of them;
 - b. The rights or reliefs claimed in them are in respect of the same transactions;
 - c. For some other reasons it is desirable to make an order consolidating them”
24. From the facts of this case as narrated above it is evident that the estates of the Deceased herein and her late father inter-related as the assets forming the estate of the Deceased were inherited from her late Father. Moreover the question of who ranks in priority to take up letters of Administration will depend on whether the written will purportedly left behind by the Deceased is found to be a genuine document.
25. Further it is not desirable to have several succession causes running in respect of the same estate. This only leads to confusion and there exists the very real risk of contradictory decisions being issued by the different courts.
26. Succession Cause No. 2916 of 2003 involves the estate of Danson Miruru Kinyanjui (the father to the Deceased in this matter). In that cause certain injunctive orders were issued affecting LR No. Dagoretti/Waithaka/264 a portion of which parcel of land is in issue in the present cases. As such it would be imperative that the pending applications in Succession Cause No. 2916 of 2003 be disposed of on priority basis in order to pave way for the hearing and disposal of the suits involving the estate of the Deceased Asha Nyakiiru Miruru.
27. In order to save costs to ensure the expeditious disposal of the matters it is my view that the succession causes ought to be consolidated. No prejudice will be occasioned to any of the parties by such consolidation.
28. The question of the validity of the will and the question of who ranks in priority to take out letters of Administration including the question of whether the Grant issued to the Respondent ought to be revoked, are all matters that would require a full hearing at which evidence is called by the parties to support their respective positions. These issues cannot be determined by way of Affidavit evidence.
29. Finally I allow the Summons dated 2nd December, 2022 in terms of Prayer (2) only. The Succession Causes Numbers 669/2016, 2620/2015 and HCPA 2763 In The Matter Of The Estate Of Asha Nyakiiru be and are hereby consolidated to be heard together.
30. I further direct that all the pending applications in Succession Cause No. 2916 of 2003 Estate Of Danson Miruru Kinyanjui be heard and determined on priority basis.
31. Likewise I do allow prayer (4) of the Summons and direct that all parties serve the firms of N.A Owino and Company Advocates with all documents filed in their respective suits. Prayers (3) of the Summons is declined. This being a family matter each side will meet their own costs.

DATED IN NYERI THIS 19TH DAY OF JULY, 2024.

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MAUREEN A. ODERO
JUDGE

