



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**SUCCESSION CAUSE NO. 1926 OF 2009**

**IN THE MATTER OF THE ESTATE OF EDWARD MUIRURI NDWARU (DECEASED)**

**MARY WAIRIMU MUIRURI.....1<sup>ST</sup> APPLICANT**

**JAMES MWANGI MBUGUA.....2<sup>ND</sup> APPLICANT**

**EDWARD MUIRURI WANJIRU.....3<sup>RD</sup> APPLICANT**

**AND**

**DAVID KAMAU MUIRURI.....1<sup>ST</sup> RESPONDENT/APPLICANT**

**VERSUS**

**HELLEN WAMBUI MUIRURI.....2<sup>ND</sup> RESPONDENT**

**RULING**

1. This ruling is in respect of two applications filed via summons for revocation of grant dated 4<sup>th</sup> November, 2019 and 8<sup>th</sup> November, 2019 respectively, and brought under **sections 47 and 76 of the Law of Succession Act, CAP 160; Rules 44, 49 and 73 of the Probate and Administration Rules; sections 1A, 1B and 3A of the Civil Procedure Act and Order 40, rule 1 & 2 of the Civil Procedure Rules, 2010.** Both applications in effect seek similar prayers namely that this court be pleased to vary and or set aside the order rendered on 24<sup>th</sup> September, 2019 in relation to the property known as Dagoretti/Riruta/L.R. 17 and revoke the consequent grant issued on the said 24<sup>th</sup> September, 2019.

2. The application dated 4<sup>th</sup> November, 2019 is supported by the grounds on the face of it and the joint affidavit of Mary Wairimu Muiruri, James Mwangi Mbugua and Edward Muiruri Wanjiru sworn on 4<sup>th</sup> November, 2019. All three are beneficiaries of the estate of the deceased herein by virtue of being the deceased's daughter and grandsons respectively.

3. It was their deposition that on 24<sup>th</sup> September, 2019, the Respondents herein, in a bid to defeat the interest of other beneficiaries, fraudulently, illegally, irregularly and arbitrarily caused the rectification of the grant that had been confirmed on 20<sup>th</sup> July, 2016. Further that in the grant, the Respondents, without any lawful reason, caused the removal of five (5) beneficiaries of the estate from the distribution of the property known as Dagoretti/Riruta/L.R. 17, three of whom are deceased.

4. It was stated that the Respondents deliberately concealed material facts, namely that the deceased's beneficiaries had dependants, and also that the property is ancestral land on which most of the beneficiaries of the estate and their dependants have lived all their lives. It was further urged that the property has been extensively developed and there exist clear boundaries for nine (9) portions as bequeathed to the deceased's children, who are nine (9) in number. Additionally, that the Respondents misled the Court by stating that the beneficiaries who were disinherited had benefited from other properties of the estate over and above the four beneficiaries to whom the property was vested in the confirmed grant. They urged that these actions were not only unfathomable, but had also caused untold anxiety and mental anguish to the disinherited beneficiaries. Therefore, that unless the orders sought are granted, the disinherited beneficiaries are bound to suffer irreparable loss.

5. On its part, the application dated 8<sup>th</sup> November, 2019 is supported by an affidavit sworn by David Kamau Muiruri, in which he echoes the sentiments that the orders of 24<sup>th</sup> September, 2019 pursuant to which the Grant of Letters of Administration of the deceased's estate was rectified were obtained by means of a false statement and concealment of material facts. David urged that he too was among the beneficiaries disinherited from the property known as Dagoretti/Riruta/L.R. 17. Further that the application was made without his consent despite his being a co-administrator of the deceased's estate and therefore that his purported consent was obtained through fraudulent means. He noted that he suffers from alcoholism and suggested that the 2<sup>nd</sup> Respondent may have obtained his consent to the application for rectification

while he was intoxicated and therefore not in a proper state of mind.

6. A cursory glance at the record reveals that the deceased herein died intestate on 24<sup>th</sup> February, 2003. A Grant of letters of administration of the deceased's net intestate estate was subsequently issued on 6<sup>th</sup> October, 2010. Later, on 20<sup>th</sup> July, 2016 the Grant was confirmed to Daniel Muiruri Mbugua, David Kamau Muiruri and Hellen Wambui Muiruri.

7. The law on rectification of grants is provided under **section 74** of the **Law of Succession Act** which provides the errors that may be rectified by the court, and **rule 43** of the **Probate and Administration Rules** which provides the procedure for seeking relief. An error which may warrant the grant of an order for rectification of grant must relate to: the names or descriptions of any person or thing; the time or place of the deceased's death and in the case of a limited grant, the purpose for which the grant was made.

8. An examination of the Summons for rectification of grant dated 10<sup>th</sup> July, 2019 pursuant to which the impugned orders relate reveals that the terms of rectification under order no. 2, particularly (a), (c) and (d) were in respect of the names and descriptions of persons. Prayer no. 2(a) sought to omit the name of one of the administrators Daniel Mbugua Muiruri who has since died. This is in line with **section 81** of the **Law of Succession Act** which provides *inter alia* that upon the death of one administrator, the powers and duties of the administrators shall vest in those who survive them.

9. What is controverted is prayer no. 2(b) which sought that the distribution of the property known as Dagoretti/Riruta/L.R. 17 Ndwaru Road, measuring 3.6017 Ha be rectified to reflect George Chege Muiruri, Catherine Nyambura Muiruri, Hellen Wambui Muiruri and Anastacia Wanja Ndwaru as the beneficiaries in equal shares. This prayer was premised on the ground that the beneficiaries proposed to be removed from benefiting in the property had already benefited from other properties in the estate. Further that the surviving beneficiaries had consented to the proposed rectifications and executed a consent to this effect. There is on record a Consent to the rectification of Grant dated 10<sup>th</sup> July, 2019 signed by all six (6) living beneficiaries of the deceased's estate.

10. Whereas David admitted to having knowledge of the application for rectification of grant, he asserted that his understanding was that the rectification would be limited only to the removal of the name of his late brother Daniel Mbugua Muiruri as an administrator, following his death on 13<sup>th</sup> January, 2018. A copy of a Certificate of Death of serial number 0564580 is on record to this effect. He pointed out that he was present in court at the hearing of the application for rectification when he heard a mention from Counsel on record that Dagoretti/Riruta/L.R. 17 was being redistributed. It was only later that he learnt that the application did in fact include a prayer for redistribution of Dagoretti/Riruta/L.R. 17 in favour of George Chege Muiruri; Catherine Nyambura Muiruri; Hellen Wambui Muiruri and Anastacia Wanja Ndwaruhe to the exclusion of five (5) beneficiaries, none of whom had consented to forfeiting their beneficial interest in the property.

11. In the affidavits sworn in support of the instant application, both David Kamau Muiruri and Mary Wairimu Muiruri maintain that they did not forfeit their beneficial interests in Dagoretti/Riruta/L.R. 17. To their knowledge, the rectification of the grant was limited to omitting the name of the deceased administrator. It was noted that whereas three of the beneficiaries are deceased, and their signatures were therefore not required in the consent, they left behind dependants who had no knowledge of the application for rectification of grant. It was urged that unless the orders for revocation of grant as sought are granted, the disinherited beneficiaries are bound to suffer irreparable loss.

12. The circumstances that can lead to the revocation of a grant are set out in **section 76** of the **Law of Succession Act** which provides thus:

**“A grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by any interested party or of its own motion-**

**(a) that the proceedings to obtain the grant were defective in substance;**

**(b) that the grant was obtained fraudulently by the making of a false statement or by the concealment from the court of something material to the case;**

**(c) that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently; ...”**

13. What emerges in the instant case is that the application for rectification sought to make substantive changes to the distribution of the deceased's estate under the guise of removing the names of deceased beneficiaries and the deceased administrator. Whereas the application claimed that the beneficiaries did not intend to hold the property as specified in the Certificate of Confirmation of Grant, and it appeared that the beneficiaries were dissatisfied with the manner in which the distribution of the property was framed, it now emerges that it in effect sought to dispute the manner in which the deceased's estate was distributed, an issue that was outside the ambit of an application for rectification of grant.

14. Additionally, whereas the application disclosed that some of the deceased's beneficiaries had since died, it failed to disclose that there were persons who survived the said beneficiaries and in whom their shares could vest. It therefore follows that the orders for the rectification of the grant were obtained fraudulently by making of a false statement, concealment from the court of something material to the case and by means of an untrue allegation of a fact, namely that the disinherited beneficiaries had forfeited their shares in the property.

15. On 2<sup>nd</sup> June, 2021 when this matter came up for hearing of the two applications dated 4<sup>th</sup> November, 2019 and 8<sup>th</sup> November, 2019 respectively, the 2<sup>nd</sup> Respondent had not filed a response thereto. The Counsel on record for the 2<sup>nd</sup> Respondent was also absent on the said 2<sup>nd</sup> June, 2021 despite the fact that the hearing date was taken by consent.

16. Based on the foregoing, I am of the considered view that the parties herein have made out a case for revocation of the grant rectified on

24<sup>th</sup> September, 2019. I note however that where a party files an application seeking the revocation of grant, the court has the discretion to make orders as it considers fit in the circumstances and is not bound to issue orders for the revocation of the grant as sought. (See - **Angelas Maina vs. Rebecca Waiyego Mwangi and Another Succession cause 692 of 2012, [2016] eKLR**).

17. Before I conclude, I wish to state that despite the fact that this is a family matter, it appears that the rectified grant sought to be revoked hereto was the result of the 2<sup>nd</sup> Respondent's actions and could have been avoided altogether. It is trite that costs always follow the events.

18. Consequently, it is hereby ordered as follows:

a. The Grant of representation confirmed to David Kamau Muiruri, Hellen Wambui Muiruri and Daniel Mbugua Muiruri on 20<sup>th</sup> July, 2016 be and is hereby confirmed to David Kamau Muiruri and Hellen Wambui Muiruri, Daniel having since passed away.

b. The orders issued on 24<sup>th</sup> September, 2019, for rectification of the Confirmed Grant are hereby vacated and the rectifications made to the Confirmed Grant pursuant to the orders be and are hereby vacated.

c. For avoidance of doubt, the schedule of distribution of the deceased's estate as per the Certificate of Confirmation dated 20<sup>th</sup> July, 2016 shall stand.

d. Costs shall be borne by the 2<sup>nd</sup> Respondent.

It is so ordered.

**DATED SIGNED AND DELIVERED IN VIRTUAL COURT THIS 7<sup>TH</sup> DAY OF JULY, 2021.**

.....

**L. A. ACHODE**

**HIGH COURT JUDGE**

**In the presence of.....Advocate for the 1<sup>st</sup>, 2<sup>nd</sup> & 3<sup>rd</sup> Applicants.**

**In the presence of.....Advocate for the 1<sup>st</sup> Respondent/Applicant.**

**In the presence of .....Advocate for the 2<sup>nd</sup> Respondent.**