



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

SUCCESSION CAUSE NO. 14 OF 2020 FORMERLY KITALE 226 OF 2010

IN THE MATTER OF THE ESTATE OF JOHN CHEGE GITHIRA Alias JOHN MWANGI (DECEASED)

TIRUS MBURU CHEGE.....1ST APPLICANT/OBJECTOR

BENSON KIMANI CHEGE.....2ND APPLICANT /OBJECTOR

AND

PETER WAIRIRI CHEGE.....1ST ADMINISTRATOR/RESPONDENT

KINYANJUI CHEGE.....2ND ADMINISTRATOR/RESPONDENT

RULING

1. This is a ruling on three applications; the first application dated 9th March 2018 filed by Tirus Mburu Chege seeks the following orders: -

a. Spent

b. Pending *inter-parties* hearing and determination of this application, the administrators, Peter Wairiri Chege and Kinyanjui Chege by themselves and or through their agents be restrained from transferring, disposing of or in any other manner howsoever dealing with the assets comprising the deceased's estate, in particular, the properties known as;

a) Title /Number Lari/Kiambaa/71

b) South Kinangop Scheme No. 260 Plot 846

c) Kolongolo Farm

d) Bungoma/Ndalu/ 39

e) The grant of letters of administration made to the administrators Peter Wairiri Chege and Kinyanjui Chege on 23rd March, 2011 and confirmed on 22nd June, 2017 and rectified on 18th January, 2018 be revoked.

f) That the Objector, Tiras Mburu Chege, be appointed as the administrator to the deceased' estate either solely or jointly with any other beneficiaries to the deceased's estate or appointed by the court.

g) This matter is transferred to Kiambu High Court for hearing and final determination.

h) The administrators' Peter Wairiri Chege and Kinyanjui Chege, do furnish an account of the sale proceeds received from the sale of various of the deceased's immovable properties.

i) The administrators, Peter Wairiri Chege and Kinyanjui Chege, do surrender and documents confirming ownership of the estate of the deceased.

j) The administrators do reimburse the deceased's estate any monies that have been misapplied.

2. The application is premised on the grounds that the objector had previously initiated Nairobi Succession Cause No. 293 of 1988 and the

majority of the beneficiaries live within Nairobi and thus matter ought to be filed in Kiambu rather than Kitale, the administrator has disposed of some immovable property belonging to the deceased.

3. Further, the mode of distribution in the confirmed grant does not reflect the wishes of the beneficiaries and does not provide for all beneficiaries.

4. The objector state that he is the eldest son of the deceased and had commenced succession proceeding in Nairobi Succession Cause No 293 of 1988 but he was never served with the petition filed by the administrators, the mode of distribution has not been agreed upon, some beneficiaries have been left out in the distribution and the administrators have sold and/or disposed of several immovable properties forming part of the deceased's estate.

5. Further the deceased left behind 19 beneficiaries of the estate.

6. The application was supported by other beneficiaries namely **Margaret Nambuye Masinde, Eunice Wangui Maina, John Githera Chege, Elizabeth Wambui Chege, Nancy Nyambura Kariithi, Margeret Wanjiru Gathitu, and Anne Njeri Chege** who filed their respective replying affidavits on 30th April 2018, stated that they were not aware of the existence of the suit and they wished to participate in the proceedings.

7. In his further affidavit dated 19th March 2018 he stated that he was aware that the administrators are in the process of selling the South/Kinangop Scheme No. 260 plot 846, and they have sold Lari/Kiambaa/71 and are in the process of receiving the balance.

8. In application dated 28th August 2018 filed by **Pinto Nelson Atudo** sought cancellation of the title deeds created out of South Kinangop Scheme No. 260 and 846 into various subdivisions being 16158, 16159, 16160, 16161, 16162, 16163, 16164, 16165, 16166, 161667, 16168, 16169, 16170, 16171, 16171,16172, 16173, 16174, and 16175 on the application of **Peter Wairiri**.

9. He averred that the administrators have caused the subdivision of the South/Kinangop plot into 18 parcels which doesn't reflect the wishes of the beneficiaries and the beneficiaries who have been issued with the titles are about to sell the property.

10. The beneficiaries intended the plot to be divided into 13 portions which the administrators ignored. He urged the Court to cancel the title deeds emanating from the 18 subdivisions.

11. In application dated 14th November 2019 **Benson Kimani Chege** filed a summons for revocation of grant dated 14th November 2019 seeking the following orders-

a. That the grant of letters of administration and certificate of confirmation of grant jointly made to Peter Wairiri Chege and Kinyanjui Chege on 21/3/ 2011 and 22nd June, 2017 respectively and rectified on 18th January, 2018.

b. That any subdivision, sale, and transfer of properties comprising the deceased's estate be canceled forthwith to enable redistribution thereof.

c. That the applicant, Benson Kimani Chege be appointed together with Tiras Mburu Chege as administrators of the deceased's estate herein.

d. That this cause be transferred to Nyahururu High Court for hearing and determination.

e. That the respondent be ordered to file an up-to-date account in Court in respect of all dealing with the deceased estate.

12. The applicant stated that he is a son of the deceased from the first house but him and his siblings were never informed of the filing of letters of administration, and no consent was sought while applying for letters of administration. Further, no provision was made for him and his siblings and thus the grant was obtained fraudulently by concealment of material facts.

13. According to him, the deceased died intestate leaving the following beneficiaries: -

First house

1) **-Miriam Wangui Chege –widow deceased**

2) **-Johania Wanyoike Chege – deceased**

3) **-Danson Kinyanjui Chege – deceased**

4) **-William Wathagana Chege- deceased**

5) **-Benson Kimani Chege**

6) **-Stephen Njoroge Chege**

7) -Grace Waithira

8) -Margaret Njambi

Second house

1) Esther Gachambi Chege – widow

2) Zipporah Waithira – deceased

3) Tirus Mburu Chege

4) Peter Wairiri Chege

5) Stephen Karinge Chege – deceased

6) Margaret Wanjiru Gathitu

7) Nancy Nyambura Kariithi

8) Elizabeth Wambui Chege

9) Ann Njeri Chege

10) George Wathagana Chege

11) Samuel Mbugua Chege

14. He supports the application for revocation of grant filed by **Tirus Chege** dated 9th March 2019.

15. In response to the application dated 9th March 2018 by **Tirus, Danson Kinyanjui Chege** filed a reply and averred that he noted he has been named a co-administrator yet he has never consented to it and that he was not aware of the pleadings and has never executed any Court document in respect to his father's estates and thus any signature adduced by **Peter Wariri** is a forgery.

16. He urged the Court to compel **Peter Wairiri** to account to the Court all the assets forming part of the deceased estate.

17. In response to the application dated **9th March 2018**, he averred the objector and all beneficiaries have been aware of the matter in Court as they executed the consent, and during the confirmation of the original grant, **Tirus Mburu** was present in Court and the objector has not proved to have filed a Succession Cause in Nairobi.

18. He averred that during a family meeting, all beneficiaries elected **Danson Kinyanjui** and **himself** as administrators.

19. The reason for filing the succession in Kitale was because the deceased had property in Bungoma, Nyandarua, Kiambu and the deceased last lived in Ndalul at the border of Bungoma and Trans Nzoia.

20. He states that the objector has disposed of the deceased estate comprising of Ndalul 2.5 acres, 5.325 acres in Lari/Kiambaa/715, 2.5 acres in Nakuru Subukia, 1 acre in Nyandarua and he has failed to account for the proceeds.

21. The objector has failed to surrender 2 acres for the ladies and he owns the largest share of the estate being 11.85 acres while other brothers own 9.85 acres.

22. In his further reply dated 15th August 2018 he stated that the objector intends to acquire his share in exclusion of the interested parties and sell the same. The green cards of all beneficiaries are out as per the confirmed grant.

23. The matter was previously handled by **Justice Chemitei** in Kitale before it was transferred to Nakuru for determination.

24. Counsels for the parties on 10th December, 2020 recorded the following consent: -

“By consent summons dated 9th March, 2018, 28th August, 2018, and 14th November, 2019 be dispensed by way of written submissions, and agreed on the following issues to be raised in the submissions-

a) Administration of the estate.

b) Cancellation of the title already issued and

c) Distribution of the estate to the beneficiaries.”

25. The applicants filed submissions but **Peter Wairiri** did not file written submissions and instead relied on the documents filed.

SUBMISSIONS BY TIRUS MBURU

26. Counsel for the objector submitted that the administrators have flouted the law as regards the administration of the estate of the deceased, the administrator flouted the procedure in obtaining the grant since all beneficiaries were not consulted during the filing of the petition contrary to **Section 66 of the Law of Succession and Rules 7 (7) and 26** of the **Probate and Administration Rules** that requires the consent of all beneficiaries. Cited the case of **Al- Amin Abdurehman Hatimy V Mohamed Abdurehman Mohamed & Anor (2013) eKLR**.

27. He submitted that the consent form attached bearing the signatures of the beneficiaries is a forgery; that the mode of distribution was not agreed upon by the beneficiaries and the same was obtained fraudulently by concealment of material facts; the administrator failed to inform the court of the pending Nairobi Succ Cause No.293 of 1988 involving the estate of the deceased.

28. He further submitted that administrators are unable to properly the administer the estate of the deceased and has disposed of the deceased properties without the consent of other beneficiaries and failed to account for the proceeds of the sale. He added that Contrary to the wishes of the beneficiaries, the administrator subdivided the Nyandarua property into 18 plots rather than the agreed 13 plots and registered the plots in his names rather than each individual's name; and he has failed to recollect the estate of the deceased, failed to include parcel no. Lari /Kereita /T. 46 as was averred by **Benson Kimani** in his affidavit and no accurate accounts have been availed before this Court.

29. He submitted that South Kinangop Scheme No. 260 and Plot No. 846 was subdivided in the year 2004 producing 13 plots on the ground while the mutation done in 2018 produced 18 plots, being 16158, 16159, 16160, 16161, 16162, 16163, 16164, 16165, 16166, 16167, 16168, 16169, 16170, 16171, 16171,16172, 16173, 1617, and 16175 he created an extra 5 plots hived from the plot contrary to the wishes of the beneficiaries and urged the Court to revoke the 18 plots and retain the 13 plots.

30. On the issue of distribution, he submitted that if the revocation is granted the distribution of the only property in dispute being South Kinangop No. 260 and Plot No. 846 be done as per the 2004 mode of distribution into 13 plots. He urged this court to revoke the grant.

BENSON KIMANI SUBMISSIONS

31. He submitted that administrators obtained the grant through concealment of material facts, without disclosing the beneficiaries of the second house; that the mode of distribution does not provide for the beneficiaries in the second house and the administrators who are respondents have sold part of the deceased property. Cited the case of in **Re-Estate of Stephen Kurgat Kimwei (deceased)** where consent of beneficiaries was considered important. He urged this court to allow the application for revocation.

ANALYSIS AND DETERMINATION

32. I have considered the consolidated applications, the affidavits in support and opposition thereto, submissions by the respective parties, the Court proceedings before Justice Chemise and wish to consider whether the grant was obtained fraudulently through concealment of material facts.

33. The circumstances under which a grant may be revoked or annulled are set out in **Section 76 of the Law of Succession Act** as follows: -

76 Revocation or annulment of grant

“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;**
- d. that the person to whom the grant was made has failed, after due notice and without reasonable cause either—**
 - i. to apply for confirmation of the grant within one year from the date thereof, or such longer period as the court order or allow; or**
 - ii. to proceed diligently with the administration of the estate; or**
 - iii. to produce to the court, within the time prescribed, any such inventory or account of administration as is required by the provisions of paragraphs (e) and (g) of section 83 or has produced any such inventory or**

account which is false in any material particular; or

e. that the grant has become useless and inoperative through subsequent circumstances.

34. Record show that the application for grant of letters of administration intestate was filed and 13 surviving beneficiaries listed. The consent was signed by **Esther Gachambi, Tirus Mburu, George Wathagana Chege, Elizabeth Wambui Chege, Eunice Wangui, and Samuel Mbugua Chege** from the second house.

35. The beneficiaries from the 1st house have not been listed in P& A 5 and they have not been provided for in the confirmed and rectified grant. I note that the beneficiaries from the 1st house have been replaced with other interested parties who are the purchasers of the estate of the deceased.

36. Further, I note from the confirmed grant that only **Danson Kinyua, Benson Kimani, and Stephen Njoroge** from the 1st house have been given a share of the estate to the exclusion of all other beneficiaries.

37. In a polygamous marriage, the mode of distribution of the estate is in accordance with **section 40 of the Succession Act** which provide as follows: -

40 "(1). Where an intestate has married more than once under any system of law permitting polygamy, his personal and household effects and the residue of the net intestate estate shall, in the first instance, be divided among the houses according to the number of children in each house, but also adding any wife surviving him as an additional unit to the number of children.

2. The distribution of the personal and household effects and the residue of the net intestate estate within each house shall then be in accordance with the rules set out in sections 35 to 38. "

38. From the averments, there is no doubt that the administrator has failed to disclose material facts and has failed to distribute the estate of the deceased as per the above legal provision. The estate of the deceased has to distributed fairly among the deceased's beneficiaries . I note that the 1st wife is deceased there are therefore 17 beneficiaries, all of who are entitled to a share of the estate of the deceased. The deceased children have left behind families and their families are entitled to inherit a share of the estate of the deceased.

39. The grant herein was obtained fraudulently in that the administrator failed to disclose the beneficiaries of the 1st house in an attempt to disinherit them from their share. As provided by **Section 40 of succession Act Cap 16 Laws of Kenya**, the assets of the deceased should be distributed between the 2 houses according to the number of children in each house. The first house has 7 beneficiaries as the widow is now deceased therefore being 7 units and the second house 11 beneficiaries including the widow therefore 11 units. The property of the deceased to be distributed in the ratio of 7 :11.

40. FINAL ORDERS

- 1) **Grant issued on 22nd June 2017 rectified on 18th January 2018 is hereby revoked.**
- 2) **Grant of letters of administration be issued to two beneficiaries of the deceased one from each house.**
- 3) **The deceased's assets to be distributed in the ration of 7:11; first house comprising of 7 units and second house 11 units**
- 4) **Each party to bear own costs.**

RULING DATED, SIGNED AND DELIVERED VIA ZOOM AT NAKURU THIS 7TH DAY OF OCTOBER, 2021

.....

RACHEL NGETICH

JUDGE

IN THE PRESENCE OF:

JENIFFER - COURT ASSISTANT

MR. GATU FOR INTERESTED PARTIES

GAKUI CHEGE FOR 3RD APPLICANT

MACHARIA FOR ADMINISTRATOR/RESPONDENT

