



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

SUCCESSION CAUSE NO. 252 OF 2005

IN THE MATTER OF THE ESTATE OF THE LATE

STANLEY M'IKUNYUA THARAMBA (DECEASED)

JENIFFER KAREGI M'IKUNYUA.....PETITIONER

VERSUS

JOSPEH KIMATHI THARAMBA.....OBJECTOR

JUDGMENT

1. Stanley M'Ikunyua Tharamba (the deceased) died on 18th March 1993. He had 4 wives with several children. On 1st July 2008, the Petitioner, Jeniffer Karegi M'Ikunyua was appointed the administrator of the estate of the deceased. Thereafter, she applied for confirmation of grant and on 15th February 2012, Makau J confirmed the grant with the following mode of distribution: -

Nyaki/Munithu/1410

Josephine Karwirwa

Jennifer Karegi M'Ikunyua Jointly

Milliam Kagwiria

Grace Kananu

Nyaki/Munithu/1408

Davies Mwiti Ikunyua

Peter Kirima Ikunyua To share equally

Annah Mwenda

2. By way of summons dated 29th July 2020, Joseph Kimathi Tharamba, the Objector filed an application for revocation of grant made on 1st July 2008 and confirmed on 15th February 2012 on the following three principal grounds: -

i) That the proceedings through which the grant was obtained were defective in substance.

ii) That the grant was obtained fraudulently by making false statements to the Honourable Court or by concealment from the Court of material facts to the case.

iii) That the grant was obtained by means of untrue allegation of a fact or point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently.

3. The application was supported by the Objector's supporting affidavit sworn on 29th July 2019. His case is that the Petitioner/Respondent, his step mother forged the death certificate dated 9th August 2004 and the letter from the Chief from Chugu Location purporting that the deceased hailed from Chugu Location to secretly obtain the letters of administration. He urges that he is the son and only child to the deceased's 1st wife. He further urges that in 1990, the deceased sold his land namely Nyaki/Munithu/1407 and the Petitioner/Respondent took him to Court in Civil Case No. 111 of 1990. He urged that the Court gave orders whose effect was to provide for the Respondent's house and the 2nd house. He urges that the Respondent was given Nyaki/Munithu/1409 and the same was transferred to her and subsequently her children and that Jenniffer Kinaitore M'Ikunyua was given Nyaki/Munithu/1408 and the same was transferred to her and subsequently her children. He urges that the Petitioner/Respondent knew that the deceased had only 3 parcels of land and that 2 had been given out to her and her co-wife. He urges that land parcel Nyaki/Munithu/1408 was to be divided between him and the 4th house who had not been provided for by the deceased during his lifetime. His position is that the grant was obtained fraudulently and by concealment of material facts and the same should be revoked.

4. The Objection was further supported by statements from 3 witnesses namely Stephen Bundi, M'Ikiao Kamawa and Moris Kiogora M'Ikione. Stephen Bundi stated he is the son to the deceased born of the 4th wife Elizabeth Kigeth. He stated that the deceased died in 1993 leaving behind 2 sons from his mother's house i.e himself and Moris Kiogora M'Ikione. He stated that they were not involved in any way in the succession cause, that he has not been given anything and that he only came to learn of the succession cause through the Chief in 2019. He stated that the grant was obtained through fraud and misrepresentation. The statement of Moris Kiogora M'Ikione mirrored that of Stephen Bundi.

5. M'Ikiao Kamawa stated that the deceased was his friend and neighbor. He stated that he is the Chairman of Kathithi Sublocation, Kirimenya Location, formerly known as Munithu. He stated that the deceased had other children who he provided for during his lifetime and that the Objector and two of his brothers were not provided for.

6. This Court has observed the contents of the (undated) affidavit of service sworn by Vivian Loice Aketch, Advocate and notes that despite proper service of a hearing notice, the Petitioner/Respondent failed to attend Court on the date of the hearing. During hearing, the Objector and his witness restated what is in their statements and affidavits.

Determination

7. The question arising in this application is on whether or not to revoke the confirmed grant issued on 15th February 2012. The burden is on the Objector to prove that there is good reason to revoke the grant. The law providing for revocation grants is Section 76 of the Law of Succession Act, Cap 160 of the Laws of Kenya. It provides 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.

8. The Objector claims that some of the beneficiaries, being himself and the deceased's 4th wife's house were left out. He claims that the grant was issued without his knowledge and that of the deceased's 4th wife's house. He claims that via Civil Suit No. 111 of 1990, the Court already made orders whose effect was to provide for the 2nd and 3rd house and as such, the remaining property was supposed to have been distributed amongst himself and the 4th house.

Concealment of Succession Cause

9. The Petitioner/Respondent has failed to respond to the application despite having had adequate opportunity to do so. The Objector claims

that the succession cause was filed without his knowledge. In the absence of any rejoinder to this assertion, this Court is inclined to accept that the succession cause was filed behind the Objector's back.

Claim for Disinheritance

10. With respect to the claim that some of the beneficiaries were left out, the Court has confirmed from the grant that the persons who benefited from the succession cause were ***Josephine Karwirwa, Jenniffer Karegi M'Ikunyua, Milliam Kagwiria, Grace Kananu, Davies Mwiti Ikunyua, Peter Kirima Ikunyua*** and ***Annah Mwenda***. If the Respondent and the 4th House comprising Elizabeth Kigeth (widow), Stephen Bundi (son) and Moris Kiogora M'Ikione (son) are true beneficiaries, then it is true that they were left out.

11. The Court observes that there are two death certificates and two letters from the Chief in the matter. The first death certificate is the one serialized B No. 817343 showing that the deceased died at Meru Hospital. The second death certificate is the one serialized B No. 817269 showing that the deceased died at Munithu Igoki. The Objector claims that the former is a forgery and the latter is the correct one. He claims that his father did not die in hospital but was killed.

12. The first letter from the Chief is the one dated 20th June 2005 by the Chief, Chugu Location showing the beneficiaries as follows: -

i) Jenniffer Kinaitore M'Ikunyua (1st Wife)

ii) Joseph Kimathi Tharamba (Son) (His mother Mary Muranga remarried and has another family of 8)

iii) Naom Kathure (Daughter-Married)

iv) Davies Mwiti Ikunyua (Son)

v) Daniel Mwenda Ikunyua (Son)

vi) Peter Kirima Ikunyua (Son)

vii) Jenniffer Karegi M'Ikunyua (2nd Wife)

viii) Milliam Kagwiria (Daughter-Not Married)

ix) Mary Makena (Daughter-Married)

x) Grace Kananu (Daughter-Not Married)

xi) Purity Ntinyari (Daughter-Not Married)

xii) Polly Nkirote (Daughter-Not Married)

xiii) Isaac Mutuma Ikunyua (Son)

13. The second letter from the Chief is the one dated 27th May 2019 by the Senior Chief Kirimene Location showing the beneficiaries as follows: -

1st House

i) Maria Muranga (Widow)

ii) Joseph Kimathi (Son)

2nd House

iii) Jeniffer Kinaitore (Widow)

iv) Naome Kathure (Daughter)

v) Davis Mwiti (Son)

vi) Daniel Mwenda (Son)

vii) Peter Kirima (Son)

3rd House

viii) *Jennifer Karegi M'Ikunyua (Widow)*

ix) *Miliam Kagwiria (Daughter)*

x) *Mary Makena (Daughter)*

xi) *Josephine Karwirwa (Daughter)*

xii) *Grace Kananu (Daughter)*

xiii) *Purity Ninyari (Daughter)*

xiv) *Polly Nkirote (Daughter)*

xv) *Isaac Mutuma (Son)*

4th House

xvi) *Elizabeth Kigetua (Widow)*

xvii) *Moris Kiogora (Son)*

xviii) *Stephen Bundi (Son)*

14. The Objector urged that the deceased did not reside at Chugu but at Munithu and thus the earlier letter from the Chief of Chugu Location was a forgery. This Court is inclined to believe the Objector, bearing in mind that the properties forming part of the deceased's estate are registered as Nyaki/Munithu indicating that the physical location of the land is Munithu. The above further reveals that the distribution as per the grant left out a number of beneficiaries. While the grant only had 7 beneficiaries, the 1st letter from the chief had listed 13 dependents and the second letter from the chief has listed 18 dependents. Further, the 7 beneficiaries who benefited from the estate were all from the 2nd and 3rd Houses.

15. As per the evidence given by the Objector, by a court order dated 11th June 1990, the High Court in *Civil Case No. 111 of 1990* made provision for the 2nd and 3rd Houses as follows:-

“By consent of the Plaintiff and the Defendant, it is now hereby agreed that this case be settled upon the following terms: -

i) That the Defendant to transfer to his first wife, Jennifer Kinaitore M'Ikunyua (I.D No. 2484699/665) Parcel Number Nyaki/Munithu/1408 measuring 2 acres or thereabouts to hold as a proprietor thereof for the benefit of herself and her children.

ii) That the Defendant to transfer to his second wife, Jennifer Karegi M'Ikunyua (I.D No. 7447319/70) Land Parcel Number Nyaki/Munithu/1409 measuring 2 acres or thereabouts to hold as a proprietor thereof for the benefit of herself and her children.

iii) That the Defendant to retain in his own name Land Parcel Number Nyaki/Munithu/1410 measuring 1 ½ acres or thereabouts. He will be at liberty to dispose.

iv) That out of the 1000 coffee trees belonging to the entire family now planted on Land Parcel Number Nyaki/Munithu/1488 which is to be transferred to the Plaintiff, the Defendant will continue to use 900 coffee trees for a period of 5 years from the date hereof within which period, he would have planted other coffee trees on the rest of the parcel of land now given to his 2nd wife and the one which he now retains. During this period, the Plaintiff (1st Wife) will only use 100 coffee trees on the said parcel of land.

v) That the Defendant to sign all necessary documents of transfer of Parcel Number Nyaki/Munithu/1408 and Nyaki/Munithu/1409 to his 1st Wife (Plaintiff) and 2nd Wife respectively. Should he refuse or fail to sign all such documents as may be required by the Land Control Board or the Land Registry, then this court through the Executive Officer shall sign all such documents on her behalf so as to give effect to this settlement.

vi) Each party to meet his/her own costs of this suit.”

16. The Court considers that these two properties were passed or should have been passed on during the deceased lifetime. The grant did not include Land Parcel Number Nyaki/Munithu/1409 but included Land Parcel Number Nyaki/Munithu/1408 and Land Parcel Number Nyaki/Munithu/1410. In any succession cause, the Court is required to take into account any previous 'benefits' when dealing with a deceased's estate. Section 42 of the Law of Succession Act provides as follows: -

42. Previous benefits to be brought into account

Where -

a) An intestate has, during his lifetime or by will, paid, given or settled any property to or for the benefit of a child, grandchild or house; or

b) Property has been appointed or awarded to any child or grandchild under the provisions of Section 26 or Section 35 of this Act

that property shall be taken into account in determining the share of the net intestate estate finally accruing to the child, grandchild or house.

17. By the time she filed the instant succession cause, the Petitioner, Jennifer Karegi M'Ikunyua, the deceased's 3rd wife, and her children had already benefited from the court order in Civil Case No. 111 of 1990. The Court allocated her Land Parcel Number Nyaki/munithu/1409, which was initially registered in the name of the deceased. This Court finds this to have been a material fact which ought to have been disclosed from the onset. She could not possibly feign ignorance of this benefit because the Court order in Civil Case No. 111 of 1990 directly affected her. Owing to this concealment, she got an undue advantage over the rest and got to benefit twice from the deceased's estate.

18. The persons who benefited from Land Parcel Number Nyaki/munithu/1408 in the grant are children of the deceased's other wife Jennifer Kinaitore M'Ikunyua. She was allocated to the very Land Parcel Number Nyaki/munithu/1408 in Civil Case No. 111 of 1990. As such, the grant did not confer an undue benefit to herself and her children.

19. The total effect of the grant, however, was to disinherit the members of the 1st house and the 4th house owing to concealment of material facts with respect to the court orders issued in Civil Case No. 111 of 1990. This Court thus finds that the threshold for revocation of grant as per Section 76 of the Law of Succession Act has been met and the application before the Court is thus merited.

Conclusion

20. The deceased died on 18th March 1993, leaving behind 4 wives and several children. Jennifer Karegi M'Ikunyua, the deceased's 3rd wife successfully petitioned for letters of administration and the grant was subsequently confirmed. The application before the Court seeks revocation of grant which was confirmed on 15th February 2012. Despite proper service, the Petitioner/Respondent failed to respond to the application and she also failed to attend Court during hearing of the application. The Applicant urges that there was concealment of material facts. He urges that the effect of the grant was to disinherit him and the members of the deceased's 4th house. The Court has analyzed the letter from the Chief dated 27th May 2019 to determine the true beneficiaries of the deceased. This Court observes that the Applicant, Stephen Bundi and Moris Kiogora M'Ikione are rightful heirs to the deceased's estate. The Applicant belongs to the 1st House and the two others belong to the 4th House.

21. This Court has also confirmed that by a court order dated 11th June 1990, the High Court in Civil Case No. 111 of 1990 allocated to 2 of the deceased's wives and their children properties. Jennifer Kinaitore M'Ikunyua, the deceased's 2nd wife was allocated Land Parcel Number Nyaki/munithu/1408 and Jennifer Karegi M'Ikunyua, the deceased's 3rd wife was allocated Land Parcel Number Nyaki/munithu/1409. These were benefits which the Court ought to have taken into account when dealing with the deceased's estate, pursuant to the provision of Section 42 of the Law of Succession Act. The Court did not have an opportunity to do so, owing to the concealment of these material facts. The net effect of the grant confirmed herein was to disinherit the Applicant and the members of the deceased's 4th House. This Court finds that the threshold for revocation of grant has thus been met. In order to safeguard the interests of the members of the 1st house and the 4th house, the Court will order for the Administrator to render accounts in accordance with the duties of a personal representative as per Section 83 of the Law of Succession Act.

ORDERS

22. Accordingly, for the reasons set out above, this Court makes the following orders: -

i) The grant issued herein on 1st July 2008 and confirmed on 15th February 2012 be and is hereby revoked.

ii) The mode of distribution of the deceased's estate will be as follows: -

Nyaki/Munithu/1410

Joseph Kimathi Tharamba

Elizabeth Kigetū To share equally

Moris Kiogora

Stephen Bundi

Nyaki/Munithu/1409

Jennifer Karegi M'Ikunyua

Milliam Kagwira

Mary Makena

Josephine Karwirwa To share equally

Grace Kananu

Purity Ntinyari

Polly Nkirote

Isaac Mutuma

Nyaki/Munithu/1408

Jennifer Kinaitore M'Ikunyua

Naome Kathure

Davies Mwiti Ikunyua To share equally

Daniel Mwenda

Peter Kirima Ikunyua

Annah Mwenda

iii) The Administrator of the estate of the deceased is hereby ordered to complete the administration of the estate in respect of all matters and to produce to the court a full and accurate account of the completed administration within six (6) months from the date of this Ruling.

iv) There shall be no order as to costs.

Order accordingly

DATED AND DELIVERED ON THIS 7TH DAY OF OCTOBER, 2021.

EDWARD M. MURIITHI

JUDGE

Appearances

M/S Vivian Aketch & Co. Advocates for the Objector/Applicant

Jennifer Karegi M'Ikunyua the Petitioner/Respondent in person