



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

SUCCESSION CAUSE NO. 348 OF 2008

IN THE MATTER OF THE ESTATE OF KARIUKI MAUCHU (DECEASED)

SILVESTER NGUNJIRI KARIUKI.....APPLICANT

VERSUS

JANE NYAGUTHII.....RESPONDENT

RULING

Brief facts

1. The application for determination dated 3rd February 2021 brought under Rule 73 of the Probate and Administration Rules and seeks for orders that the grant of letters of administration be issued to the applicant.
2. The respondent filed a Replying Affidavit dated 9th April 2021 opposing this application.

The Applicant's Case

3. It is the applicant's case that he filed an application for revocation of grant confirmed on 26th February 2010 in favour the respondent and for land parcel AGUTHI/GATITU/2968 to revert to the name of the deceased. The court heard the application and on 12th October 2018, the grant was revoked and ownership of the suit property reverted to the name of the deceased. As such, the applicant prays that the grant of letters of administration be issued to him so that he may proceed with the cause to its conclusion.

The Respondent's Case

4. It is the respondent's case that besides the applicant, there are other heirs in this cause entitled to the estate and that it would be prudent for the court to appoint her and the applicant as co- administrators of the estate as opposed to the applicant alone.

5. The applicant filed a Supplementary Affidavit dated 12th May 2021 and states that the respondent is not a beneficiary or dependant of the deceased as the deceased was survived by the following children:-

- a. Agnes Muthoni Kariuki
- b. Lucy Wanjiru Mwaniki
- c. Sylvester Ngunjiri Kariuki
- d. Sylvester Wanjau Kariuki
- e. John Ngatia Kariuki (deceased) and survived by his wife Zainabu Muthoni Ngatia
- f. Juliana Wachera Kariuki.

6. The applicant further states that the respondent is a child to the his sister Lucy Wanjiru Mwaniki who is alive and living in Ichuga, Laikipia County.

7. The applicant further contends that the deceased, prior to his death, had distributed his estate to all his 6 children equally. The deceased's estate comprised of one parcel of land Aguthi/Gatitu/2968 within Skuta Nyeri with each child getting 1 acre each. The applicant states that his share consists of land parcel Aguthi/Gatitu/2968 which was not transferred to him before the deceased died. Further that one Agnes Muthoni Kariuki sold her share and relocated to Nairobi. Lucy Wanjiru Mwaniki also sold her share and relocated to Ichuga Laikipia County. Sylvester Wanjau Kariuki still has his share being AGUTHI/GATITU/2970, John Ngatia's share AGUTHI/GATITU/2969 was granted to his wife Zainabu Muthoni Ngatia. Julia Wachera Kariuki still holds her parcel being AGUTHI/GATITU/1547. As such, the applicant states that none of his siblings objects to his entitlement over the suit property nor do they object to the applicant being granted the letters of administration. The applicant further states that it is thus strange that a granddaughter of the deceased can object to him being an administrator whereas his siblings are not objecting to the same. Further, the applicant states that the respondent is the only grandchild claiming to be appointed administrator of the estate.

8. The applicant contends that the respondent has not demonstrated why she should be granted letters of administration over and above her mother who is alive. As such, if the respondent feels that she is entitled to anything from the deceased's estate she ought to seek for inheritance through her mother.

9. Parties hereby disposed of the application by way of written submissions.

The Applicant's Submissions

10. The applicant relies on **Section 66 of the Law of Succession Act** and the case of **Kakamega High Court Succession Cause No. 859 of 2018 In the matter of the Estate of Agwang Wasiro [2020] eKLR** and submits that the law is clear on the order of preference with regard as to who ought to apply and be appointed as an administrator.

11. The respondent in her affidavit contends that she wants to be made a co-administrator but the applicant points out there are no sufficient grounds that support her case of being appointed an administrator of the estate. The applicant further submits that he has given a detailed structure of the deceased's family and he questions why the respondent is seeking to be an administrator yet she is a granddaughter of the deceased and therefore not a beneficiary. As such, the applicant prays that he be granted the letters of administration of the estate.

The Respondent's Submissions

12. The respondent submits that there are 5 other siblings to the applicant who have survived the deceased and none of them have consented to the applicant being appointed as administrator. Furthermore, the respondent contends that when the summons for confirmation was filed, it is only the applicant who declined to sign the consent. Therefore, the 5 siblings should be involved in the proceedings as their claim in the estate may have changed. The respondent therefore prays that she and the applicant should be appointed as administrators to enable the cause be concluded.

Issues for determination

a. The issue for determination is who ought to be appointed as the administrator of the estate of the deceased.

The Law

Who should be appointed as the administrator of the estate of the deceased.

13. **Section 66 of the Law of Succession Act** is instructive and it provides:-

When a deceased has died intestate, the court shall, save as otherwise expressly provided, have a final discretion as to the person or persons to whom a grant of letters of administration shall in the best interests of all concerned, be made, but shall, without prejudice to that discretion, accept as a general guide the following order of preference:-

- a. A surviving spouse or spouses, with or without association of other beneficiaries;**
- b. Other beneficiaries entitled on intestacy with priority to their respective beneficial interests as provided by Part V;**
- c. The Public Trustee; and**
- d. Creditors.**

14. The applicant in his affidavit stated that the deceased was survived by 6 children as follows:-

- a. Agnes Muthoni Kariuki
- b. Lucy Wanjiru Mwaniki
- c. Sylvester Ngunjiri Kariuki
- d. Sylvester Wanjau Kariuki

e. John Ngatia Kariuki (deceased) and survived by his wife Zainabu Muthoni Ngatia

f. Juliana Wachera Kariuki.

15. The respondent did not deny that she is a grandchild of the deceased and that her mother is still alive. Following the ranking set out in section 66, the applicant ranks higher in priority over the respondent on administration of the deceased's estate. The respondent can only claim for a share of her grandfather's estate through her mother who is alive. It is also worth noting that the respondent has not indicated that she was a beneficiary or a dependant of the deceased. She seems to be arguing on behalf of the applicant's five other siblings. However, the law is clear that only a beneficiary or dependant of the deceased has legal capacity to institute succession proceedings. In this case, since the respondent is neither a beneficiary nor a dependant she has no *locus standi* to make submissions on behalf of the other five children. Furthermore, she has no basis to make the application of being a co-administrator.

16. It is noted that the grant in this case in favour of the respondent was revoked by the court on ground that it was obtained fraudulently and that it was obtained by means of untrue allegation of a fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance of inadvertently.

17. It is also on record that this cause was filed without a letter from the area chief. The respondent is the one who had obtained the grant in those dubious circumstances and had it confirmed as the sole heir of the deceased's estate comprising of LR. AGUTHI/GATITU/2968. In her petition for letters of administration intestate, the respondent had represented herself as a daughter of the deceased instead of a granddaughter.

18. The deceased had six(6) children and most of them still living. It is surprising that their consent was not obtained by the applicant who is also a child of the deceased. His word of mouth that his siblings have no objection is not enough. If the applicant is appointed the sole administrator of the estate without consent of the rest of the family, the other beneficiaries may come up with applications which may result to unnecessary litigation. This is notwithstanding the fact that he is one of the beneficiaries of the estate.

19. I am of the considered view that the applicant ought not to be appointed the sole administrator of the deceased's estate to prevent future conflict in this cause. In the interests of justice, I hereby make the following orders:-

a. That the beneficiaries nominate one of them to be appointed a co-administrator together with the applicant.

b. That the beneficiaries do file within thirty(30) days a consent executed by all the surviving beneficiaries with copies of their identification documents.

20. It is hereby so ordered.

DELIVERED, DATED AND SIGNED AT NYERI THIS 11TH DAY OF NOVEMBER, 2021

F. MUCHEMI

JUDGE

Ruling delivered through video link this 11th day of November 2021