



IN THE HIGH COURT OF KENYA

AT MERU

SUCCESSION CAUSE NO. 518 OF 2001

(CORAM: CHERERE-J)

IN THE MATTER OF THE ESTATE OF SOLOMON MWENDA MUNGANIA (DECEASED)

IN THE MATTER OF APPLICATION FOR REVOCATION OF THE GRANT

BETWEEN

ISAAC MURANGIRI MUNGANIA.....PETITIONER/RESPONDENT

JULIA KARIMI MUNGANIA.....2ND RESPONDENT

KIRAITU MURUNGI.....3RD RESPONDENT

AND

DORCAS MWARI M'NAITURI.....APPLICANT

RULING

Background

1. **Solomon Mwenda Mungania (Deceased)** died sometimes on 04th April, 2014.
2. His brother **Isaac Murangiri Mungania (Petitioner/1st Respondent)** was on 29th October, 2015 issued with Letters of Administration Intestate. **By a Certificate of Confirmation of Grant issued on 13th November, 2017, deceased's estate in NYAKI/KITHOKA/4274 (suit property) was distributed to his sister JULIA KARIMI MUNGANIA (2nd Respondent)** and she was issued with a title deed dated 19th March, 2018.
3. Subsequently, by a sale agreement dated 23rd October, 2018, 2nd Respondent sold the **suit property to KIRAITU MURUNGI (3rd Respondent)**.
4. When **DORCAS MWARI M'NAITURI (Applicant)** got wind that deceased's estate had been distributed and sold off, she filed summons dated 02nd April, 2019 for revocation of the grant mainly on the ground that the deceased's other brothers and Applicant who is widow to one of deceased's brother were not involved in the distribution and sale of deceased's land.

Applicant's case

5. Applicant stated that she was wife to **GERALD KIMATHI**, a half-brother to the deceased. It was her evidence that deceased who was of unsound mind was neither married nor had children and had lived with her family until his death and was therefore his dependant. She stated she had been using deceased's land and had planted coffee thereon and had lost its use after it was sold off. In support of her case, Applicant called 4 witnesses. **Mutua Mururu** stated that deceased was a member of his church and he used to visit him at the home of the Applicant. **Douglas Kiogora** stated that he had been employed by Applicant to take care of the deceased. **Esther Regeria M'Mbijiwe**, a cousin to the deceased and **John Maina Kariuki** a herdsman of the Applicant stated that deceased lived with Applicant until he died.

1st & 2nd Respondents' case

6. **Isaac Murangiri Mungania (Petitioner/1st Respondent)** testified that he was brother to the deceased and the 2nd Respondent among others whereas Applicant's husband was his half-brother. He denied that the deceased was of unsound mind but conceded that he lived with Applicant's family, not to be taken care of but as an employee. It was his evidence that Applicant who used to pick coffee from deceased's land was notified before the estate was distributed and denied that Applicant was deceased's dependant entitled to his estate.

7. **Julia Karimi Mungania (2nd Respondent)** like her brother **Petitioner/1st Respondent** denied that Applicant was deceased's dependant entitled to his estate. **Zidane Muriithi**, nephew to deceased did not know deceased's estate but was informed it had been sold and out of the proceeds his fees was paid and land was acquired in his name.

3rd Respondent's case

8. It was 3rd Respondent's case that he did due diligence and followed all legal procedures before he bought the suit property from the 2nd Respondent. He was subsequently issued with a title deed on 10th January, 2019. It was his evidence that he had been unable to utilize the suit property after the court issued an injunction restraining the parties from using the property pending the hearing and determination of this case.

Analysis and Determination

9. From the evidence on record, it is undisputed that the Applicant is widow to Gerald Kimathi who is half-brother to the deceased. On the other hand, the Petitioner and 2nd Respondent are deceased's siblings. It is also conceded by the parties that deceased was neither married nor had children. It is also on record that deceased lived with the Applicant's family for many years.

10. Having considered the evidence on record and submission filed on behalf of the parties, I have deduced two issues for determination

1) Whether the grant was obtained without disclosing material facts to court

2) Whether Applicant is entitled to deceased's estate in NYAKI/KITHOKA/4274.

11. Concerning the first issue, Section 76 of the Law of Succession Act (*the Act*) provides as follows:

“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 has ordered or allowed; 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.”

12. According to the Applicant, the larger Mungania family had agreed that her family was to take care of the deceased and subsequently inherit his land. Applicant faults the Petitioner for failing to disclose that fact at the time of distributing deceased's estate. The 1st and 2nd Respondent deny the Applicant's assertion. In the absence of evidence to corroborate the Applicant's contention, I find that it has not been demonstrated that the Petitioner is guilty of non-disclosure of material facts to warrant revocation of the grant.

13. It is on record that deceased's parents are deceased and he had no wife nor children. As stated hereinabove, the Applicant is wife to deceased's half-brother whereas the 1st and 2nd Respondents are deceased's siblings.

14. The law concerning benefits by siblings is to be found under Section 39 of *the Act* which provides:

(1) Where an intestate has left no surviving spouse or children, the net intestate estate shall devolve upon the kindred of the intestate in the following order of priority

a) father; or if dead

b) mother; or if dead

c) brothers and sisters, and any child or children of deceased brothers and sisters, in equal shares; or if none

d) half-brothers and half-sisters and any child or children of deceased half-brothers and half-sisters, in equal shares; or if none

e) the relatives who are in the nearest degree of consanguinity up to and including the sixth degree, in equal shares.

(2) Failing survival by any of the persons mentioned in paragraphs (a) to (e) of subsection (1), the net intestate estate shall devolve upon the State, and be paid into the Consolidated Fund.

15. It is certain that 1st and 2nd Respondents who are deceased's siblings are in the fourth degree of consanguinity to the deceased with half-brothers and sisters coming fifth. Consequently, deceased's estate can only devolve to the half-brothers and sisters in which category the Applicant falls by virtue of her being married to deceased's half-brother if the persons entitled in the first to fourth degree of consanguinity are unavailable which is not the case in this cause.

16. From the evidence on record, I am persuaded that 1st and 2nd respondents complied with the requirements of the Succession Act in petitioning the Court for the grant. The rightful beneficiaries of the estate were listed and duly participated in the Succession proceedings. The necessary consents were availed at the confirmation of the grant and it is clear that no case has been made out for the revocation of the grant herein. Similarly, Applicant has not demonstrated that she is a beneficiary to deceased's estate.

17. There is evidence that 2nd respondent sold **NYAKI/KITHOKA/4274** to the 3rd Respondent with the consent of all beneficiaries. Subsequently the 3rd respondent obtained title and is therefore the legal owner.

18. There is evidence that the Applicant had been using and had developed deceased's land. It would have been courteous on the part of the 1st and 2nd Respondent to inform her about the intended sale, not necessarily as a matter of seeking her consent but to ensure a smooth transition to the buyer. I can only hope that the family will find a way of appeasing the aggrieved Applicant.

19. Consequently, Applicant's application for revocation of grant dated 02nd April, 2019 and filed on 03rd April, 2019 is found to have no merit and it is dismissed. Each party shall bear its own costs.

DATED AT MERU THIS 04TH DAY OF NOVEMBER 2021

WAMAE. T. CHERERE

JUDGE

Court Assistant - Morris Kinoti

For Applicant/Protector - N/A for Gichunge Muthuri & Co. Advocates

For 1st & 2nd Respondent - N/A for Charles Kariuki & Kiome Associates Adv

For 3rd Respondent - Mr. Muriuki for Mbogo & Muriuki Advocates