



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**MILIMANI LAW COURTS**

**FAMILY DIVISION**

**SUCCESSION CAUSE NO. 1250 OF 2011**

**IN THE MATTER OF THE ESTATE OF BERNARD KIARIE KAMAU (DECEASED)**

**MARY NYAMBURA MBUGUA.....APPLICANT**

**VERSUS**

**MARY WAMBUI KIARIE.....1<sup>ST</sup> RESPONDENT**

**MARTHA NDEGWA.....2<sup>ND</sup> RESPONDENT**

**RULING**

1. The deceased Bernard Kiarie Kamau died intestate on 30<sup>th</sup> April 1997. He left a widow Mary Wambui Kiarie (1<sup>st</sup> respondent) and the following children:-

- a) Ann Wanjiku Wainaina;
- b) Martha Ndegwa (2<sup>nd</sup> respondent);
- c) Anastasia Muthoni Gichohi;
- d) Hellen W. Fwaya;
- e) John Kamau Kiarie;
- f) Paul Muiruri Kiarie;
- g) Teresia Nyambura Gachenge;
- h) John Joseph Chege Kiarie; and
- i) Zakaria Mbugua Kiarie.

2. The only asset of the deceased was Loc. 5/Githunguri/1 measuring 2.83 Hectares.

3. Zakaria Mbugua Kiarie was married to the applicant Mary Nyambura Mbugua with whom he had a son Kevin Kiarie Mbugua. He (Zakaria) died on 10<sup>th</sup> May 2010.

4. On 24<sup>th</sup> June 2011 the respondents petitioned this court for the grant of letters of administration intestate, and obtained the grant on 18<sup>th</sup> October 2011. In the petition, they did not include the applicant or her son. The grant was on 23<sup>rd</sup> September 2014 confirmed. The parcel of land was shared among John Kamau Kiarie, Paul Muiruri Kiarie, John Joseph Chege Kiarie and the 1<sup>st</sup> respondent in equal shares.

5. On 19<sup>th</sup> February 2020 the applicant filed the present application under **section 76** of the **Law of Succession Act (Cap 160)** seeking the revocation of the grant and certificate of confirmation on the grounds that the proceedings leading to the grant were defective in substance, the grant was obtained fraudulently by the making of a false statement or concealment from the court of something material to the case, she being the daughter-in-law was not informed of the filing of the petition and neither was she cited, and that she had consequently been intentionally disinherited. The substance of her complaint was that the applicants knew she was the widow of the deceased's late son and yet, without reference to her had gone ahead to petition and obtain a grant and eventually share out the deceased's estate without providing for her or her son.

6. The 1<sup>st</sup> respondent swore a replying affidavit to state that, the reason they did not involve the applicant was that she is of abusive conduct; that there is fear that if she is given land she will sell it or deal with it in a manner that is detrimental to her son (the 1<sup>st</sup> respondent's grandson). The 1<sup>st</sup> respondent stated that the late Zakaria Mbugua Kiarie died from severe burns that had resulted from epilepsy seizure, and that this happened when he had separated from the applicant. Otherwise, the 1<sup>st</sup> respondent stated, the applicant stays in the house built by the late Zakaria Mbugua Kiarie on a portion of land the deceased had shown him.

7. The parties were represented, and their counsel filed written submissions which I have read and considered.

8. Under **section 51(2)(g)** of the **Act** and **rules 7(1)(e)** and **26(1)** of the **Probate and Administration Rules**, the applicants were required to indicate the names and addresses of all the children of the deceased. Now that one of the children of the deceased had died but had left a family, the widow and child were required to be indicated. Beyond that, the applicant was entitled to be notified of the petition for her to signify that she had been notified of the application by either signing her consent in forms 38 or 39, or by executing a renunciation. In **Re Estate of Festo Akwera Kusebe (Deceased) [2019]eKLR**, the widow of the deceased did not in her petition for the grant of letters of administration indicate that the deceased had left a daughter in-law with children. The widow proceeded to obtain the grant, got it confirmed and she solely inherited the only parcel of land that the deceased had left. In revoking the grant and cancelling the certificate of confirmation, the court found the widow to have been dishonest and fraudulent, and not deserving to be an administrator in the estate of her late husband.

9. It is now trite that a daughter in-law of a deceased, in the sense that she was the widow of the late son of the deceased, was a recognised beneficiary of the estate of the deceased (**In re Estate of Florence Mukami Kinuya [2018]eKLR**).

10. Likewise, in this case, upon the death of Zakaria Mbugua Kiarie, his widow (the applicant) became a beneficiary of the deceased. There was no way a petition seeking the grant of letters of administration intestate in respect of the deceased was going to be filed without notifying her, for her to either renounce her claim to the grant or to consent to the respondent taking up the grant. She was known to exist. It was known she was staying with her son in the house that the deceased had shown her late husband. The intention to leave her out of the succession proceedings, I find, was to disinherit her and her son. She may have been abusive, but that was not a reason to disinherit her.

11. If the 1<sup>st</sup> respondent was keeping her portion for the applicant's son, why was the son not named in the petition or in the certificate of confirmation? Why didn't the certificate of confirmation indicate that the 1<sup>st</sup> respondent held her share in trust for her grandson?

12. I determine that the proceedings leading to the grant and certificate of confirmation were not only defective in substance but were also fraudulent.

13. However, should the grant be revoked and this dispute begins afresh? I consider not. It is clear from the way the estate was distributed that the daughters of the deceased surrendered the estate to be shared among the sons of the deceased and their mother (1<sup>st</sup> respondent). If that was the arrangement, and Zakaria Mbugua Kiarie was a son of the deceased, I review, set aside and recall the certificate of confirmation. If titles had issued in accordance with the certificate of confirmation, they will each be cancelled. Instead, Loc. 1/Githunguri/1 shall be shared equally among Mary Wambui Kiarie, John Kamau Kiarie, Paul Muiruri Kiarie, John Joseph Chege Kiarie and Mary Nyambura Mbugua. Mary Nyambura Kiarie shall be registered to hold her parcel in trust for herself and for her son Kevin Kiarie Mbugua.

14. Costs of the application shall be paid by the respondents.

**DATED AND DELIVERED AT NAIROBI THIS 14TH DAY OF DECEMBER 2021.**

**A.O. MUCHELULE**

**JUDGE**