



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MURANG'A

SUCCESSION CAUSE NO. 15 OF 2019

[FORMERLY NAIROBI P&A CAUSE 1865 OF 2016]

RE ESTATE OF NJAGUA WANDII (DECEASED)

ESTHER WAITHIRA NJAGUA.....1ST APPLICANT

JULIUS MUTHUITA NJAGUA.....2ND APPLICANT

JOYCE MUNJIRU NJAGUA.....3RD APPLICANT

WASHINGTON MWANGI NJAGUA.....4TH APPLICANT

VERSUS

NJUGUNA NJAGUA.....RESPONDENT

RULING

1. The disputants are all children of the late Njagua Wandii (hereafter *the deceased*) who died intestate on 17th July 2013.
2. By a summons dated 4th July 2019, the applicants pray that the grant issued to the respondent on 14th July 2008; confirmed on 19th July 2017; and, rectified on 19th January 2019 be revoked. That grant was issued by the Registry at Nairobi in Nairobi High Court Succession Cause 1865 of 2016. That file has since been transferred to Murang'a and renumbered.
3. The applicant's case is that the grant was fraudulent and made in secret for a number of reasons. Firstly, that the applicant failed to disclose the existence of proceedings in Murang'a High Court Succession Cause 1149 of 2013 over the same estate. A grant had been issued there on 17th February 2014. Following a protest, the parties were to file submissions to determine the confirmation of the grant. Instead, they say that the respondent secretly filed fresh proceedings at Nairobi in the aforementioned cause.
4. Secondly, the applicants claim that the respondent did not list all the beneficiaries or obtain the necessary consents. Some of the deceased's assets were also omitted in the schedule. The applicants are also apprehensive that the respondent will transfer the entire estate to himself to their detriment.
5. All those matters are detailed at length in the joint affidavit sworn on 4th July 2019.
6. The application is contested. The respondent has filed a replying affidavit sworn on 4th September 2019. He had also lodged another "affidavit of protest" on 5th August 2019. The objections are four-fold: Firstly, that before his demise, the deceased had distributed part of his estate and gave the applicants other pieces of land itemized in paragraph 5 of the first affidavit.
7. Secondly, that the 1st and 3rd applicants (his sisters) are "*married and they have their own husbands*". Thirdly, that the grant at Nairobi was not obtained in secret because the 2nd applicants and another brother, Joseph Warui Njagua, were present and consented to the confirmation of the grant in the Nairobi cause.
8. Fourthly, he accuses the applicants of hiding the fact that the deceased gave him the two parcels of land as he had not been allocated other land particularized in paragraph 5 of the affidavit.

9. Regarding the filing of a separate cause at Nairobi, he deposes as follows-

That I did not abandon succession cause 1149 of 2013, Murang'a but rather my advocates advised me to file this succession cause in Nairobi because the shares of the deceased were in Nairobi and the deceased owned a plot in Lucky Summer Nairobi which is now owned by Joseph Warui Njagua who is a son of the deceased.

10. On 25th October 2021, learned counsel for both parties informed the court that they would rely entirely on their written submissions. Those by the applicants were filed on 5th July 2021. The respondent filed submissions on 10th May 2021 as well as supplementary submissions dated 19th October 2021.

11. I take the following view of the matter. A grant, whether or not confirmed, may be revoked either by the court *suo moto*; or, by an application made under section 76 of the **Law of Succession Act** (hereafter *the Act*).

12. I find that the grant issued and confirmed in Nairobi is defective for a number of reasons. Firstly, the respondent had filed another cause at in Murang'a High Court Succession Cause 1149 of 2013 over the same estate. A grant was issued to him on 17th February 2014. Following a protest by some beneficiaries, he jumped ship and secretly filed Nairobi High Court Succession Cause 1865 of 2016 on the advice of his lawyers. The Act as read together with the **Probate and Administration Rules** do not countenance the filing of multiple causes or the issuance of numerous grants as in this case.

13. Secondly, the respondent did not notify the disputants in the Murang'a cause. This is clear from the original file from Nairobi transferred here. It shows that the consent to the making of the grant was executed by only Julius Muthuita Njagua and Joseph Warui Njagua. I agree with the respondent that it is now strange for Julius Muthuita to make an about-turn. The point however to be made is that the respondent did not include or obtain the consent of *all* beneficiaries including the 1st, 3rd and 4th applicants. That offends section 51 (2) (g) of the Act and Rule 26 of the **Probate and Administration Rules**.

14. I thus readily find that the proceedings in Nairobi High Court Succession Cause 1865 of 2016 were irregular or defective in substance; and, that the grant was obtained by the making of a false statement or by the concealment from the court of material facts.

15. For those reasons, I have no hesitation to revoke the grant issued to the respondent on 14th July 2008; confirmed on 19th July 2017; and, further rectified on 19th January 2019. In the interests of fairness; and, the discretion bestowed by section 66 of the Act, I order that a fresh grant be issued *jointly* to the respondent (Njuguna Njagua) and Washington Mwangi Njagua (the 4th applicant).

16. Regarding the distribution of the estate, the respondent and applicants shall file their proposed modes of distribution for consideration by the court. In view of the diametrically opposite positions taken by the disputants on that issue, I direct that the issue of distribution be heard *viva voce* on a date that I shall now grant.

17. I will make no order on costs.

It is so ordered.

DATED, SIGNED and DELIVERED at MURANG'A this 7th day of December 2021.

KANYI KIMONDO

JUDGE

Ruling read in open court in the presence of:

Mr. Kirubi holding brief for Mr. Njiraini for the applicants instructed by R. M. Njiraini & Company Advocates.

Mr. Njue for the respondent instructed by Gesare Oginda & Company Advocates.

Ms. Dorcas Waichuhi & Ms. Susan Waiganjo, Court Assistants.