



REPUBLIC OF KENYA

IN THE HIGH COURT AT EMBU

SUCCESSION CAUSE NO. 399 OF 2011

IN THE MATTER OF THE ESTATE OF SAMUEL MUNDUWA IGANE (DECEASED)

MARGARET KARIMI SAMWEL.....APPLICANT

VERSUS

EUNICE IGANDU NJAGI.....RESPONDENT/ADMINISTRATOR

R U L I N G

A. Introduction

1. This is a ruling for the summons for revocation of grant dated 28th January 2013 in which the applicant asserts that the respondent obtained a grant of letters on the 21/12/2011 that were later confirmed on the 19/07/2012 through the making of a false statement and concealment of facts material to the case.
2. It is the applicant's case that she is a daughter in law to the deceased herein and that she and her children used to live on the deceased's parcel of land No. Kagaari/Kanja/1221 until her husband passed away when the respondent chased her away forcing her to sign a document stating that she would not claim anything from her late husband's estate.
3. The applicant further states that she later filed citation proceedings against the respondent in Runyenjes SRM Succ. No. 139 of 2011 in respect to the estate of the deceased herein but during the pendency of the aforementioned proceedings, the respondent herein filed the present succession proceedings and proceeded to take the whole estate of the applicant's father in-law which she later shared to her children leaving out the applicant and her children.
4. It is the applicant's case that the respondent has since divide up land parcel no. Kagaari/Kanja/1221 among herself and other beneficiaries thus disinheriting the applicant and her children.
5. In rejoinder, the respondent deposed that the applicant was not a daughter in-law to the deceased and in any case she was not a dependant to the deceased's estate under Section 29 of the Law of Succession Act. The respondent further deposed that the deceased did not share his estate with anyone prior to his death.
6. The respondent further deposed that her late son, Lukas Muriithi only had two children of whom she is the guardian namely Nicasio Muriithi and Patrick Muriithi. It is further deposed that the applicant willingly signed the letter stating that she would not claim anything from the estate of Lukas Muriithi and as such is estopped from alleging duress. Further to this the respondent states that she filed the instant proceedings because the Runyenjes Magistrate's Court lacked jurisdiction as the deceased's estate was estimated to be valued at Kshs. 2,000,000/=.
7. It is further deposed that the applicant herein waived her rights to the deceased's estate by failing to file an objection to the instant proceedings and that the order of the lower court was illegal as the applicant lacked *locus standi* to institute any suit on behalf of the estate of Lukas Muriithi.
8. The parties agreed to dispose of the application by way of written submissions with only the applicant filing hers.

B. Applicant's Submissions

9. It is submitted that the respondent's failure to inform the court that the applicant was a widow to the respondent's deceased son and had two children amounted to concealment of crucial facts material to this cause warranting the revocation of grant.
10. It is submitted that the respondent also failed to inform court that there was a citation filed against her before the magistrate's court in

Runyenjes and that she filed the instant suit without involving the applicant herein thus denying the applicant the opportunity to protest her application. Reliance was placed on the case of **In Re Estate of Julius Ndubi Javan [2018] eKLR** where it was held inter alia that **non-disclosure of material facts undermines justice and must be immediately reversed to purify the streams of justice.**

11. It is also submitted that though Wilson Mugendi Muriithi was not a biological son of the respondent's son, he was a son within the provisions of **Section 3 (2) of the Law of Succession Act** which provides for a child as **"any child whom he (deceased) has expressly recognized or in fact accepted as a child of his own for whom he has voluntarily assumed permanent responsibility."**

12. It is also submitted that the letter the applicant was forced to sign on or about the 2nd November 2010 denouncing any claim she had against the estate of Lukas Muriithi was null and void.

C. Analysis & Determination

13. The issue for determination is whether the Applicant meets the threshold for the revocation of a grant within the meaning of **Section 76 of the Law of Succession Act**. That Section states;

"Section 76: 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."

14. The applicant has a duty to prove that any grounds set out in **section 76 of the Law of Succession Act** before the grant issued is revoked. In the case of **Albert Imbuga Kisigwa v Recho Kawai Kisigwa, Succession Cause No.158 OF 2000, Mwita J. in a decision rendered on 15th November, 2016, noted thus:**

"[13] Power to revoke a grant is a discretionary power that must be exercised judiciously and only on sound grounds. It is not discretion to be exercised whimsically or capriciously. There must be evidence of wrong doing for the court to invoke section 76 and order to revoke or annul a grant. And when a court is called upon to exercise this discretion, it must take into account interests of all beneficiaries entitled to the deceased's estate and ensure that the action taken will be for the interest of justice."

15. The applicant's case is that the grant was fraudulently obtained through material concealment and non-disclosure to the detriment of herself and her children given that she was a daughter in law to the deceased in this case and that since her husband had passed on, she and her children were entitled to her late husband's share for he was a heir of the deceased. She further contends that the respondent and others not before this court coerced her into signing a letter on or about the 2nd November 2010 in which she absolved any claim she had over the estate of her alleged late husband, Lukas Muriithi. The applicant further claims that the respondent instituted the instant suit without her knowledge thus denying her the opportunity to object to the same.

16. On her part, the respondent denies that her late son was ever married to the applicant herein. However, she acknowledges that in any case, the applicant is not entitled to the deceased's estate as she is a daughter in law. The respondent further states that the applicant abrogated her right to lay claim from the estate of her late son, Lukas Muriithi by dint of signing the letter on or about the 2nd November 2010. In a quick about face, the respondent further alleges that the magistrate's court in Runyenjes lacked jurisdiction over the deceased's estate as it was valued at Kshs. 2,000,000/= and further that the applicant's failure to file an objection to the instant proceedings signaled her abrogation of her rights over the deceased's estate.

17. In my considered view, it is not in dispute that the applicant was the widow of the late Lukas Muriithi and thus a daughter in law to the deceased herein. The respondent admits as much in her response to the summons for revocation but adds the caveat that the applicant is greedy having abrogated her rights to the estate of the late Lukas Muriithi vide her signature on the document made on or about the 2nd November 2010.

18. Accordingly, it was a requirement of the law that the respondent should have made the disclosure in filing this cause that her late son was married to the applicant and had four (4) children. The record reveals that this was not done. The respondent named her eleven children and herself as the beneficiaries of the deceased's estate. The two grandchildren of the respondents who are also children of the applicant's late husband were later given shares in the estate. The name of the applicant's husband was included in the chief's letter and indicated that he was a heir of the estate but was deceased. The chief's letter dated 6/09/2011 was in respect of the estate of Samuel Mundu Waigane, late husband of the respondent.

19. Therefore, the beneficiaries of the estate of the deceased were excluded contrary to **Section 51 (2) (g) of the Law Succession Act and Rule 7(1) Probate & Administration Rules**. Consequently, non-disclosure of all other beneficiaries pre-empted the required written consents to be availed to petition of grant of letters of administration and confirmation of grant.

20. In my considered view, on a balance of probabilities that the evidence adduced by the applicant has not been rebutted by the respondent. The law is clear that concealment of material facts from the court is a ground for revocation of a grant which was issued to a party in a succession matter. The court in the case of **Jamleck Maina Njoroge v Mary Wanjiru Mwangi (2015) eKLR** at paragraph 11 of its ruling in revoking a grant reiterated the grounds upon which a grant can be revoked. It stated as follows: -

“11. The circumstances that can lead to the revocation of grant have been set out in Section 76 Law of Succession. For a grant to be revoked either on the Application of an interested party or on the court's own motion there must be evidence that the proceedings to obtain the grant were defective in substance, or that the grant was obtained fraudulently by making of false statement, or by concealment of something material to the case, or that the grant was obtained by means of untrue allegations of facts essential in point of law.” (emphasis added.)

21. The applicant is the daughter in law of the deceased Samuel Mundu Waigane while the respondent is the widow of the deceased. Being the widow, the respondent was entitled to be issued with letters of administration intestate of her late husband's estate. The respondent was bequeathed the whole estate being LR. Kagaari/Kanja/1221 measuring 4.00 ha. which she later shared out to her children and two grandsons.

22. The applicant states that she got married to the late Lucas Muriithi in 1998 under Embu customary law. Her father in law, the deceased herein was still alive and was to die in 2003. At the time of marriage, she had a son aged eight (8) namely Wilson Mugendi who was taken by Lukas as his own son. Lukas had two children namely Patrick Mutugi and Nicasio Murimi aged eight (8) and two (2) years whom he was taking care of having separated with their mother. Both Lukas and the applicant took up parental responsibilities over the three children as their own. In 2002 the couple was blessed with one child namely Doreen Murugi.

23. Further evidence was that the applicant and her late husband had a portion of land given by the deceased where they had cultivated carious crops and trees including macadamia among others. The couple had a joint account with Nawiri Sacco in which they saved the tea and coffee proceeds. The applicant said she was harassed by the respondent's sons when her husband fell ill in 2010 who took all the banking records of Lukas. When he finally died, he applicant was accused of bewitching him which she denied and still denies. By the time her husband passed on, the applicant had left the matrimonial home due to harassment. She was kept of the burial arrangements meetings of Lukas. Following the burial, the respondent and her sons took Kshs. 63,000/= from the bank account of Lucas and gave the applicant only Kshs. 9,000/= and signed the agreement to forfeit her share in the family land under duress.

24. It was further stated that the entitlement of Lucas which was two (2) acres was subdivided into tow the resultant parcels being LR. Kagaari/Kanja/8841 and 8840 and given to the applicant's step sons while her own children Wilson Mugendi and Doreen Murugi were denied any share.

25. In the statement of the applicant's witness one Jerither Njoki Samuel, the applicant's evidence that she was the wife of the late Lucas Muriithi married under customary law was supported including the fact that she stayed with Lucas and their children on the land of the deceased before Lucas died.

26. The respondent denied in her affidavit that the applicant was not an heir nor dependant of the deceased in this case. It was also denied that the applicant was ever married to the deceased's son Lucas Muriithi and that they had any children. It was further stated that the widow of Lucas is still alive and left their two children namely Nicasio Murimi and Patrick Muriithi with him as she remarried. When Lucas died, the respondent said that she became the guardian of the two children.

27. The respondent admits that money was withdrawn from the account of Lucas after he died with the authority of the area District Officer. It is further stated that the applicant signed the letter/agreement dated 2/11/2010 and forfeited her share in the estate.

28. The issue is whether the applicant was a wife of the late Lucas Muriithi a son of the deceased and whether she effectively forfeited her interest in the estate by signing the letter referred to by the respondent.

29. The said agreement dated 2/11/2010 was signed by the applicant and three others described her uncle, niece and sister on one part. On the other part, the respondent signed together with her two sons, a cousin and a sister. The agreement was in form of a letter. It was addressed to the area District Officer by the Chief of Kagaari West Location requesting the District Officer to authorise withdrawal of funds from the account of Lucas Muriithi to be shared between the applicant and the children of the deceased.

30. The 3rd last paragraph of page 2, states that the respondent will take responsibility and custody of deceased's two children Nicasio and Patrick while the applicant takes responsibility and custody of Doreen Murugi, the 3rd child. The name of the 4th child Wilson Mugendi does not feature in the agreement.

31. The agreement shared out the funds in deceased's account among his children, the applicant and the respondent.

32. From the evidence of the parties, the funds were later withdrawn and shared with the respondent taking the bulk of the money. The funds were part of the estate of Lucas Muriithi, the late husband of the applicant in which the respondent had no stake given that there was a widow and four (4) children.

33. The Law of Succession Act spells the rights of the deceased beneficiary. The contents of the agreement seem to lock out the applicant from inheriting her deceased's father in law property. The respondent put the agreement into effect by giving shares in the land of the deceased to all her children and to her two grandsons Nicasio and Patrick whom she had taken custody of.

34. In my view, the agreement that contradicts the provisions of the law is null and void for all intents and purposes. The agreement is discriminative for it locks out one beneficiary while all other children in the family were catered for. In that scenario, the provisions of the Act as to inheritance rights of all the parties are applicable in this case. I declare the said agreement null and void for it has no legal effect given the provisions of the law of inheritance.

35. Although the respondent refers to the applicant and her two children Wilson and Doreen as strangers, she entered into an agreement with the applicant to share funds in the account of Lucas Muriithi. How could she do so if the three people were "strangers" and "unknown" to her as she puts it.

36. In my considered view, the respondent acted dishonestly in taking the bulk of the funds of the applicant's husband knowing very well that he had children who needed school fees and maintenance. The withdrawal of the funds was a gross violation of the provisions of the Succession Act which provides for the governing of a deceased person's estate. The District Officer and the Chief had no authority under the law to authorise any withdrawal of funds from the bank account of a deceased person. The two government officers also acted illegally and could be held liable of intermeddling with the estate of Lucas Muriithi together with the respondent and the applicant.

37. This court believed the evidence of the applicant and that of her witness that she was the deceased's wife and that the deceased had four children two of who were not provided for in his late father's estate. The respondent was untruthful for denying that the applicant was widow of Lucas. The respondent was dishonest when she referred to the applicant as a "stranger" and her two children as "unknown". She was betrayed by the invalid agreement that she sought to rely on which names the applicant and her children as interested parties in the estate of Lucas.

38. I therefore find that the applicant has satisfied the court that she is the widow of the late Lucas Muriithi an heir of the estate of the deceased Samuel Mundu Waigane.

39. The respondent through her conduct and actions was aware of the fact that the applicant was an heir of the deceased in place of her deceased husband.

40. The law provides that all known heirs and interested parties need to be notified of any succession proceedings concerning the estate of the deceased. The respondent failed to inform the applicant of the succession proceedings. She also failed to disclose to the court that the applicant was an heir and therefore an interested party in the proceedings. The respondent did not disclose that her deceased son Lucas had more than two children.

41. However, I find this case as one with very unique facts. The respondent was the one who stood in priority under Section 6 to apply for letters of administration intestate in the estate of her late husband Samuel Mundu Waigane. The applicant and the children of the deceased stood second in row. There is no way the applicant would have been appointed an administrator of the deceased's estate since the widow of the deceased was alive and possessed of the capacity to be issued with the grant.

42. The respondent as the administrator proceeded to share out the estate of the deceased to her children and two grandchildren Nicasio Murimi and Patrick Muriithi and left out the applicant and her children.

43. The law makes it clear that grandchildren are not direct heirs of a deceased's estate. It is trite law that they can only step in the shoes of their deceased parents and take the parents' shares. The respondent therefore acted contrary to the law of distributing the estate to the two grandchildren in exclusion of the other two and in exclusion of the applicant who was a direct heir.

44. I have perused the certificate of official searches and note that the combined share of Nicasio Murimi 0.32 ha. and Patrick Muriithi 0.38 ha. is more or less equivalent to the sizes of the land portions given to the children of the deceased by the respondent. She must have intended to give the two children what would have gone to their father Lucas had he been alive.

45. For the foregoing reasons, I find it not in the interests of justice to revoke the entire grant for it is likely to destabilize several beneficiaries who have already taken up their parcels of land. However, the court will redistribute the estate of the deceased by making the following orders: -

a) That the transfer and registration by the respondent to Nicasio Murimi and Patrick Muriithi are hereby declared null and void.

b) That the titles of LR. Kagaari/Kigaa/8840 and 8841 are hereby cancelled and the said parcels redistributed thus: -

i. LR. Kagaari/Kigaa/8840 to be registered in the names of Nicasio Murimi and Patrick Muriithi in equal shares.

ii. LR. Kagaari/Kigaa/8841 to be registered in the names of the applicant Margaret Karimi to hold in trust for herself and her children Wilson Mugendi and Doreen Murugi in equal shares.

c) That each party to meet their own costs of this application.

46. It is hereby so ordered.

DELIVERED, DATED AND SIGNED AT EMBU THIS 20TH DAY OF JANUARY, 2020.

F. MUCHEMI

JUDGE

In the presence of: -

Ms. R. Njeru for Applicant