



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

SUCCESSION CAUSES NO. 6 OF 2008

IN THE MATTER OF THE ESTATE OF MKUNYU MARURU ALIAS M' IKUNYUA MARU (DECEASED)

ELIAS KINOTI IKUNYUA.....1ST PETITIONER

DOUGLAS MURUNGI.....2ND PETITIONER

VERSUS

DAMARIS KARAMANA M' IKUNYUA.....APPLICANT/OBJECTOR

RULING

1. **Mkunyū Maruru** (*the deceased herein*) died on 12/9/2007. **Elias Kinoti Ikunyua and Douglas Murungi** (*the petitioners herein*) petitioned for letters of administration on 7/11/2008. As per the letter of introduction of the Area Chief-Runogone Sub location the deceased left behind sixteen beneficiaries' seven of whom are still alive while nine have since passed on. The deceased also left behind thirteen (13) assets.
2. A Grant of letters of administration was issued to the petitioners on 3/06/2008. The petitioners filed summons for confirmation of grant on 17/12/2008. The same was confirmed on 9/2/2009. The grant was rectified severally the last of which was on 16/5/2009.
3. **Damaris Karamana M' Ikunyua** filed summons for revocation of grant on 26/04/2019. Her major arguments were that the petition was filed secretly and fraudulently without her knowledge. According to her, she did not therefore consent to the filing of the petition. She also stated that she has been denied her share of the estate by the petitioner. She also sought for an Order of inhibition over Nyaki/Kithoka/3522 and for the petitioners to account for the proceeds of the sale of the deceased shares in various institution as per the grant issued on 6/11/2012.
4. She averred that she is a daughter to **Maritha Nkina Ikunyua** who together with **Lydia Kanini**, her sister, were given parcel number **Nyaki/Kithoka/2491** measuring 1 acre. The said parcel of land has since been divided into two parcels i.e. **Nyaki/ Kithoka/ 3522 & 3521. Parcel 3521** was given to **Lydia Kanani** whereas the petitioner held **Parcel 3522** in his name. That at the time of subdividing Parcel No. Nyaki/Kithoka/2491 a fraction of 0.06 ha was missing. She stated that the objector is also privy to information that the 2nd petitioner wishes to dispose of the aforesaid Nyaki/Kithoka/3522.
5. The petitioner opposed the application vide Replying Affidavit dated 15/7/2019 stating that it is not true that the petition was filed secretly as can be revealed by the objector's application dated 16/11/2018 in which he had sought to be substituted as beneficiary in place of her mother, Maritha Nkina Ikunyua and in which she had given a detailed account of the courts proceedings. That the estate of the deceased has since been distributed with the exception of Parcel No. 3522. To him, the applicants claim over Parcel No. 3522 cannot be a basis for revocation of grant.
6. The petitioner continued to state that Maritha Nkina Ikunyua left behind four daughters i.e. **Damaris Karamana, Joyce Gateti(deceased), Susan nthiori (deceased), and Lydia Kanini**. Joyce Gateti left behind three children while Susan Nthiori one child **Moses Mutembei**. That while the children of Joyce Gateti live in their father's homestead. Moses Mutembei was left destitute hence it was the intention of Maritha Nkina M' IKunyua to have Moses Mutembei inherit Parcel No. 3522. That it is the intention of the administrators that the applicant and children of both Joyce Gateti and Susan Nthiori should get a share, Moses Mutembei getting a bigger share.
7. They are yet to sell the shares since they have not yet traced the original share certificates.

Submissions

8. The Applicant filed submissions to augment her stand point on the matter. According to her it is not enough for the petitioner to state that she was aware of these proceedings since she applied for substitution of her late mother. She cited the case of MARGARET GACUKU

9. The petitioner also filed submissions in support of his case. He insisted that the beneficiaries were all involved and were aware of the proceedings. Therefore there was no concealment of any material fact. He submitted that no fraud was proved as it is her late mother who wished her share to go to Mutembei, her grandson, who was a destitute and took care of him when she was alive. The applicant now has engaged in a dishonesty pursuit to disinherit him. Accordingly, he prayed for the application to be rejected.

Analysis and Determination

10. Has the Applicant met the threshold for revocation of a grant in accordance with Section 76 of the Law of Succession Act? The 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.

11. The applicant has filed the application as a granddaughter of the deceased. The proceedings show that her mother participated in the proceedings until she met her demise. Accordingly, as her mother was alive and participated in the proceedings, the applicant who was her daughter and therefore a grandchild of the deceased did not have the privilege or preference of giving consent in law. See **Section 66 of the Law of Succession Act**, on the general guide on the order of preference as well as Part VII and **Rule 26(1) and (2) of the Probate and Administration Rules**.

12. It bears repeating and the record shows this; that her mother and her sister were fully aware of the proceedings. The averment therefore that these proceedings were filed secretly and without their prior consent does not hold sway.

13. The applicant has also stated that the 2nd petitioner is desirous of selling their mothers rightful share. She has however not attached any evidence in this regard, say a sale agreement and/or evidence that the petitioner has hived off their mothers share for his own benefit. The allegation has also been denied by the petitioner who is keen to distribute the share for the benefit of all the children of Martha Nkina Ikinyua.

14. In this present cause, the grand children are not claiming interests as dependants of the deceased but the share of their respective deceased parents. Children are entitled to inherit the share which their deceased parents would have inherited were it not for their death. Musyoka J. in the case of **Estate of Veronica Njoki Wakagoto (deceased) (2013) eKLR** stated as follows:

“.....grandchildren can only inherit their grandparents indirectly through their own parents, the children of the deceased. The children inherit first and thereafter the grandchildren inherit from the parents. The only time grandchildren inherit directly from their grandparents is when the grandchildren’s own parents are dead. The grandchildren step into the shoes of their parents and take directly the share that ought to have gone to the said parents.”

See also **In re Estate of Joyce Kanjiru Njiru(Deceased) [2017] eKLR**

15. It seems the dispute is now distribution of the estate of the deceased parent. Such dispute cannot found a revocation of grant but should be resolved amongst the dependants of the deceased parent by application of the law; such share devolves to the children of the deceased parent in equal shares. The applicant did not propose the mode of distribution which she intends to distribute her mother’s estate. Her wish is to have the estate registered in the name of one of the beneficiaries of the estate of Martha Kina as opposed to the petitioners’ proposed mode of distribution. I am aware distribution of such estate could easily be determined in these proceedings by application of the law, i.e. equal distribution among the children. But sometimes there could be such intense disagreements or deep-seated issues or substantial issues of law and fact such as gifts *inter vivos* which will affect the principle of equality and which of necessity require plenary hearing. In most cases

where such disputes arise, the entire succession cause for the deceased is held hostage for a long time; and all the other dependants suffer at the hands of the feuding grandchildren. I dare also ask whether it makes any difference if such disputes come after the share of the deceased parent has already been determined and the grant confirmed. Is it not prudent to give such share to the administrator of the deceased parent so that disputes among the dependants thereto are resolved in a separate cause? Just food for thought. Nonetheless, the court could still deal with the share due to Martha Kina Ikinyua given that her children have stepped into her shoes under the doctrine of representation.

16. Abiding by the provisions of the Law of Succession Act and guided by Section 47 of the Act, I find it fit to distribute **L.r. No.Nyaki/kithoka/3522** amongst the daughters of the now deceased daughter of the deceased with exception of Lydia Kanini who had already benefitted from the estate of the deceased herein. The property shall therefore be distributed as follows;

L.r No. Nyaki/Kithoka/3522

(i) Damaris Karamana

(ii) Estate of Joyce Gateti Equally

(iii) Estate of Susan Nthiori

17. In this, issues in the application are determined. The grant shall therefore be amended accordingly. No orders as to costs.

Dated, signed and delivered in open court at Meru this 18th day of February, 2020

F. GIKONYO

JUDGE

IN PRESENCE OF

M/S Miriti for Muthomi J. for applicant

Gacuki for respondent

F. GIKONYO

JUDGE