



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MURANG'A

SUCCESSION CAUSE NO. 635 OF 2015

RE ESTATE OF NGURE KAMAU (DECEASED)

KAMAU NGURE.....1ST APPLICANT

MONICA WANJIRU NGURE.....2ND APPLICANT

VERSUS

MARGARET WANJIKU NGURE.....1ST RESPONDENT

HENRY KAMAU NGURE.....2ND RESPONDENT

RULING

1. Ngure Kamau (hereafter *the deceased*) died *intestate* on 9th October 2000. It is common ground that he was *polygamous*.
2. A grant of letters of administration was issued by the Senior Principal Magistrates Court at Kandara on 23rd October 2014. The grant was confirmed on 5th February 2015. That grant was made to one of the widows, Margaret Wanjiku Ngure and her son, Henry Kamau Ngure (hereafter *the 1st and 2nd respondents*).
3. The *free estate* seems to be land known as *Loc.3/Mukuria/850* (hereafter *the suit property*). Under the confirmed grant the property devolved wholly to the 1st respondent.
4. The applicants from the 1st house have brought a *Summons for Revocation of Grant* dated 4th May 2016. They aver that the grant was obtained by fraud. The pith of the objection is that the applicants did not consent to the appointment of the administrators or to the distribution of the estate. They also contend that the succession cause was lodged in secret.
5. The retort by the respondents is straightforward: That the deceased had two parcels of land; *Loc.3/Mukuria/850* measuring 2 acres and *Loc.3/Mukuria/851* measuring 1½ acres. They averred that before his demise, the deceased transferred *Loc.3/Mukuria/851* to the 1st applicant as the share of the 1st house. They thus submitted that the remaining parcel of land, *Loc.3/Mukuria/850*, was to devolve to the 2nd wife (the 1st respondent) in accordance with the wishes of the deceased.
6. On 31st October 2016, the High Court (*Waweru J*) directed that the summons be dispensed with by written submissions. All the parties filed written submissions on 29th May 2017 and 2nd June 2017 respectively.
7. Like I stated, the deceased was polygamous. His wives were Sarah Wambui Ngure (now also deceased) and Margaret Wanjiku Ngure (the 1st respondent). The children from both houses are listed at paragraph 7 of the affidavit in support of this summons sworn on 4th May 2015. I find that the respondents *disclosed* the exact particulars of the beneficiaries (including the two widows) in the impugned cause at the lower court. That is evident from paragraph 2 of the affidavit in support of the confirmation of grant sworn by the respondents on 13th January 2015. The annexed letter from the area chief dated 11th April 2014 also disclosed the full list of beneficiaries from both houses.
8. I *cannot* then say that the respondents *concealed* to the lower court the full particulars of the beneficiaries or heirs.
9. It is also *not* true that the applicants were completely in the dark about the succession cause in the lower court. The respondents aver that the applicants were summoned and appeared before *Nditika SPM* in the lower court on 6th February 2016 where they raised no objections. The applicants have not controverted that fact in their affidavits. It is also common ground that the cause was advertised in the *Kenya Gazette*.

10. It is not lost on me either that the applicants have not controverted the fact that during the lifetime of the deceased, he transferred Loc.3/Mukuria/851 to the 1st applicant as the share of the 1st house. Although the applicants contend that the *value* of the estate exceeded the pecuniary jurisdiction of the lower court at the time, no *valuation* was presented before me. The presumed value is not a matter over which I can take judicial notice.

11. In the end I am *unable* to find that the proceedings in the lower court were tainted by secrecy or failure to obtain all the necessary consents. I thus *decline* to revoke the grant issued on 23rd October 2014 and confirmed on 5th February 2015 in Kandara Senior Principal Magistrates Court Succession Cause Number 1 of 2014.

12. The upshot is that the applicants' *Summons for Revocation of Grant* dated 4th May 2016 is hereby *dismissed* but with no order as to costs.

It is so ordered.

DATED, SIGNED and DELIVERED at MURANG'A this 18th day of February 2020.

KANYI KIMONDO

JUDGE

Ruling read in open court in the presence of:

Mr. Kinuthia for the applicants instructed by L. M. Kinuthia & Associates Advocates.

Respondents (in person).

Ms. Dorcas and Ms. Elizabeth, Court Clerks.