



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

FAMILY DIVISION

SUCCESSION CAUSE NO. 3098 OF 2007

IN THE MATTER OF THE ESTATE OF JULIA WAITHIRA KARATU (DECEASED)

R U L I N G

1. The deceased herein Julia Waithira Karatu died intestate on the 12th of May, 1999. She was unmarried and childless. The closest relative alive after her death was her mother, Mary Karatu who died in 2001. Other relatives alive include her nephew Joseph Ng'ang'a Mururi; the applicant and his siblings, who are children of Julia's sister; Wambui Muiruri.
2. The grant of letters of administration in this matter was petitioned for on the 13th of November, 2007 by Mary Wangari Kimemia and Margaret Njeri Kamau both describing themselves as cousins of the deceased. To support their petition, they annexed a letter dated 17th of May, 2007 signed by one Ephantus M. Gichimu acting Chief Kangari Location who described them as "rightful heirs" to succeed the deceased.
3. Based on the above information a grant issued to the two on the 6th of March, 2008.
4. In an application dated 28th June, 2012 the two sought for confirmation of the grant and agreed that the only asset of the estate L.R. Loc. 2/Kangari/2886 be divided into two; where Mary Wangari Kimemia would get 0.4 Ha. and Margaret Njeri Kamau 0.2 Ha. A certificate of confirmation of grant was issued accordingly on 30th July, 2012.
5. By turn of events on the 30th of May 2016 Joseph Ng'ang'a Mururi filed Summons for Revocation, as one of the nephews of the deceased stating that the two administrators are neither beneficiaries nor relatives of the deceased but fraudsters, intermeddlers and strangers. His case is that since the deceased had no children, and her parents and siblings deceased the Estate ought to go those of the deceased lineage.
6. From the evidence on record the deceased pre-deceased her mother who was the only close relative alive and who died in 2001, 2 years after her. The deceased father and siblings died much earlier. One of her sisters Wambui Mururi left behind children; the applicant being one of them.
7. The Administrator/respondents in their documents before court describe themselves as cousins and rightful heirs yet in her oral evidence, the 1st administration informed court that her husband had bought land from the deceased which was 4 acres and at two different stages and thereafter sold ½ acre to the 2nd administrator/ Respondent.
8. The applicant does admit the sale of 2 acres to the 1st applicant's husband but disputes the sale of the next 2 acres being described as L.R. Loc. 2/Kangari/2886 which has since been divided into Loc.2/Kangari 4784 and Loc. 2 Kangari/4785.
9. The issue before court for now is whether or not to revoke the grant that was obtained based on wrong information and concealment of material facts?

Section 66 of the Law of Succession Act (hereinafter referred to as "the Act") gives preference of the order in which grant of representation in an estate would issue in the following terms:

“when a deceased has died intestate, the court shall, save as otherwise provided, have a final discretion as to the person or persons to whom a grant of letters of administration shall in the best interest of those concerned, be made, but shall, without prejudice to that discretion, accept as general guide the following order of preference-

- a. Surviving spouse or spouses with or without association of other beneficiaries;
- b. Other beneficiaries entitled on intestacy, with priority according to their respective beneficial interest as provided for by Part V;
- c. The Public Trustee; and
- d. Creditors.”

Part V provides; in particular Section 39;

“where intestate has left no surviving spouse or children.

i. Where an intestate has left no surviving spouse or children, the net intestate estate shall devolve upon the kindred of the intestate in the following order of priority-

- a. Father; or if dead
- b. Mother; or if dead
- c. Brother and sisters, and any or children of the deceased brothers and sisters, in equal shares, or if none
- d. Half-brothers and half-sisters and any child or children in equal shares.
- e. The relatives who are in the nearest degree of consanguinity up to and including the sixth degree, in equal shares.

10. The Respondent misled the court that they were cousins of the deceased. They did not disclose that there were relatives of the deceased alive meaning that important information was concealed thus denying the court the necessary information in exercise of its discretion.

11. Even if the claim by the Respondents is genuine, they ought to have cited the relatives of the deceased in order to lay their claim but not pose as cousins of the deceased. The Law of succession as set in **Section 39 of Part V**. They would have also obtained orders of the court to petition if it was necessary. Instead they misled the court in order to get the grant of letters of administration.

12. Indeed, the court learnt that the Applicant already petitioned this court in 1372 of 2013 and a grant issued on 30th July, 2013.

13. Consequently, based on the Law and facts as remunerated above the grant issued on 6th March, 2008 and confirmed on 30th July, 2012 be and is hereby revoked and it also follows that the land registrar Murang'a will cancel/subdivisions Loc.2/Kangari/4784 and Loc.2/Kangari/4785 and restore the original title Loc. 2/Kangari/2886 to the name of the original owner Julia Waithira Karatu deceased pending further order of the court.

14. For now, Joseph Ng'ang'a Mururi as appointed in Succession Cause No. 1372 of 2013 will remain the administrator of the estate of Julia Waithira Kiratu.

15. Costs to the Applicant.

DATED DELIVERED AND SIGNED THIS 11TH DAY OF JUNE, 2020.

.....

ALI-ARONI

JUDGE