



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MURANG'A

SUCCESSION CAUSE NO. 1256 OF 2013

RE ESTATE OF TERESA WANJIKU UMBACH ALIAS TERESA WANJIKU UMBACHI

NANCY WANGARI UMBACH.....APPLICANT

VERSUS

FRANCIS NJAU NJUGUNA.....RESPONDENT

JUDGMENT

1. Teresa Wanjiku Umbach *alias* Teresa Wanjiku Umbachi (hereafter *the deceased*) died intestate on 16th April 1997. However, the petition filed by the respondent in this cause falsely referred to her as Teresia Wanjiru Umbach.
2. The deceased was survived by her husband Bernd Kurt Umbach. Their union was not blessed with any children.
3. The deceased was the registered owner of seven properties known as Loc.2/Kangari/2963; Loc.2/Kangari/2964; Loc.2/Kangari/2965; Loc.2/Kangari/2966; Loc.2/Kangari/2967; Loc.2/Kangari/3071; and, Loc.2/Kangari/2049 (hereafter *the suit properties*).
4. The brother of the deceased, Francis Njau Njuguna (hereafter *the respondent*), applied for a grant of letters of administration to the estate in which he claimed to be the sole beneficiary. The claim was backed by a handwritten letter from the Chief Kinyona Location dated 20th March 2013. A grant was issued to him on 24th October 2014 and confirmed on 5th August 2015.
5. Nancy Wangari Umbach (hereafter *the applicant*) was aggrieved. She lodged summons for revocation of the grant on 4th May 2017. She claimed that the grant was issued fraudulently and through concealment of material facts. She also prayed for an injunction prohibiting any dealings with the suit properties.
6. Following the death of the deceased, Bernd Kurt Umbach remarried Nancy Wangari Umbach on 14th February 2006. Bernd died intestate on 1st September 2012 at Nairobi. Her widow, Wangari, has since been issued with a confirmed grant dated 6th October 2015 in Nairobi Succession Cause No. 44 of 2013.
7. Notwithstanding service upon the respondent (including some directly by the court) he never replied to the summons.
8. On 18th July 2018, the court directed that the summons be determined on the basis of the pleadings and written submissions. The applicant lodged submissions on 5th November 2018. The respondent did not file any submissions.
9. I readily find that the averments by the applicant in her deposition sworn on 3rd May 2017 are uncontroverted and I accept the facts to be true. I have come to the conclusion that the grant was obtained through fraud and concealment of material facts for five key reasons.
10. Firstly, the respondent deliberately and cunningly failed to disclose that the deceased's husband, Bernd Kurt Umbach, had applied for a grant in *Nairobi High Court Succession Cause 2643 of 2005 - In the Matter of the Estate of Teresa Wanjiku Umbach alias Teresa Wanjiku Umbachi*. A grant was issued to Bernd on 15th December 2005 as per annexure NW1.
11. Secondly, the respondent had lodged an objection to that grant arguing that the deceased had bequeathed some of the properties to him and that the properties were excised from family land. In a considered judgment delivered on 9th April 2008, the court (*Gacheche J*) dismissed the objection and confirmed the grant to Bernd Kurt Umbach.
12. Thirdly, it is evident that the respondent irregularly applied for a grant on 28th November 2013 at the Murang'a High Court fully aware that the matter was concluded in Nairobi. His conduct was not accidental: He was taking full advantage of the gap left by the death of Bernd

on 1st September 2012.

13. Fourthly, in the instant proceedings, he deliberately concealed the fact that the deceased was survived by her husband, Bernd, and that the respondent's claim to a piece of the estate had been dismissed by the High Court at Nairobi. To disguise his scheme, he described the deceased falsely as *Teresia Wanjiru Umbach*.

14. Fifthly, it was fraudulent for the respondent to file this cause and to blatantly claim that he was the *sole* beneficiary. He misled the court further by annexing a fictitious handwritten letter from the Chief Kinyona Location dated 20th March 2013. From what I have stated, the respondent did not rank in priority and the entire proceedings were contrived to defeat the cause of justice.

15. For all those reasons, I order as follows:

a) That the grant issued to Francis Njau Njuguna on 24th October 2014 and confirmed on 5th August 2015 be and is hereby *revoked*.

b) That a permanent injunction be and is hereby issued restraining the respondent, his agents or assigns or in any other manner whatsoever from possessing, alienating, selling, leasing, transferring, charging or dealing with any of the properties known as Loc.2/Kangari/2963, Loc.2/Kangari/2964, Loc.2/Kangari/2965, Loc.2/Kangari/2966, Loc.2/Kangari/2967, Loc.2/Kangari/3071 and Loc.2/Kangari/2049.

c) That there shall be no order on costs.

It is so ordered.

DATED, SIGNED and DELIVERED at MURANG'A this 2nd day of July 2020.

KANYI KIMONDO

JUDGE

Judgment read in open court in the presence of:

Mr. M. Githinji for the applicant instructed by Githinji Mwangi & Associates Advocates.

Mr. T. Njoroge for the respondent instructed by T. M. Njoroge & Company Advocates.

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