



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

SUCCESSION CAUSE NO. 1028 OF 2014

IN MATTER OF THE ESTATE OF THE LATE MATHENGE WATHEYA (DECEASED)

DAVID WANJOHI NDONGA.....APPLICANT

VERSUS

CHARLES NDUNGU GITATA.....1ST RESPONDENT

LUCY WAGUTHII NDUNGU.....2ND RESPONDENT

PETER MBAUNI MATHENGE.....3RD RESPONDENT

JOSEPH NJAGI WANJOHI.....4TH RESPONDENT

RULING

1. The applicant filed summons for Revocation of Grant on the 7/02/2019 under the provisions of Section 47 and 76 of the Law of Succession Act and Rules 44 and 73 of the Probate and Administration Rules and is seeking for the following orders;

- i. The Grant of Letters of Administration intestate issued to **FRANCIS WANJOHI MATHENGE** on 16/03/2015 be revoked;
- ii. That the Honorable Court be pleased to set aside all the subsequent orders arising from the said Grant of Letters of Administration Intestate;
- iii. That upon granting prayer (1) and (2) above the Honorable Court be pleased to order and/or direct the Land Registrar Nyeri County to revoke the Title Deeds issued to the 1st, 2nd, 3rd and 4th respondents herein and revert the estate of the abovementioned deceased to its original state;
- iv. That the costs of this application be provided for.

2. The application was supported by the grounds on the face of the application and on the supporting affidavit of the applicant sworn on the 7/02/2019.

3. A brief overview of the facts are as follows; **Francis Wanjohi Mathenge (Francis)(now deceased)** as a son of the deceased herein had petitioned the court for Letters of Administration in respect of the estate of his late father **Mathenge Watheya (deceased)** who died intestate on the 22nd December, 1968; the Grant was issued on the 16/05/2015 and was subsequently confirmed on the 2/02/2016 therein Francis distributed the parcel of land known as Thegenge/Karangia/186 as set out in the Certificate of Confirmation; Francis died on the 16/07/2018 before effecting the transmission of the estate to the persons named therein as beneficiaries;

4. Directions were given on the 26/11/2019 that the parties canvassed the Preliminary Objection together with the application for Revocation of the Grant by filing and exchanging written submissions.

APPLICANT'S SUBMISSIONS

5. The Applicant relied on his supporting affidavit and stated that he was the son of the late Hannah Wangechi Ndonga (**Hannah**), a daughter of the deceased, to whom the estate relates; that the date of her demise was the 5/10/2005; he confirmed that Francis had petitioned for a

Grant of Letters of Administration and was issued with a Grant on 16/03/2015 which was subsequently confirmed on 2/02/2016; his contention was that when the petition was filed he was never consulted and that his mother's consent was illegally and fraudulently obtained as his mother died on the 5/10/2005 which translates to before the filing of the petition and therefore could not have appended her signature to the consents dated 22/12/2014 and 28/09/2015;

6. He argued that the petition and the application for confirmation did not indicate that his late mother Hannah was survived by her children; and therefore no provision was made for them; nor was there a proper consent signed and filed by the 1st and 2nd respondent;

7. That his mother was deprived of her share out of her father's estate; he therefore prayed that the grant be revoked and that the estate revert to its original state.

1ST RESPONDENT'S SUBMISSIONS

8. In response the 1st respondent named Charles relied on his Replying Affidavit and written submissions; he stated that the applicant was indeed the son of Hannah who was a sister of the administrator named 'Francis'; that Hannah was married and going by Kikuyu customary law the applicant did not belong to the lineage of the deceased;

9. That the application herein was mischievously brought with the connivance and in collusion with the 4th respondent; that the applicant also lacked locus as he was neither an administrator to his late mother's estate nor had he demonstrated that his siblings supported his application;

10. His argument was that the Grant the applicant was seeking to revoke was a non-starter in law as it lacked substratum and that the Grant had long been executed and Titles issued;

11. The 1st respondent prayed that the Grant issued by the court be upheld and that it should not be revoked and prayed that the applicant's case be dismissed.

2ND RESPONDENT'S SUBMISSIONS

12. The 2nd respondent was a spouse of the 1st respondent and associated herself with his submissions.

3RD RESPONDENT – This respondent did not file written submissions.

4TH REPENDENT'S SUBMISSIONS

13. The 4th respondent also relied on his replying Affidavit and his written submissions; he stated that he was a son of Francis and that the deceased was his grandfather; the applicant was a son of a sister of his father making him his cousin;

14. His father (now deceased) was a co-administrator of the estate herein together with the 3rd respondent; that he was not a personal representative of his father's estate and that he had been wrongly enjoined to the proceedings; and prayed that his name be struck out from the proceedings;

15. Nevertheless, he went on to add that the applicant's application was fueled by greed; that the applicant's late mother Hannah was married and her family resided and had property in Kinangop, Nyandarua; that his grandfather died in 1968 and the applicable law was Kikuyu Customary law which does not provide for married daughters to inherit their father's property;

16. He pointed out that the applicant had no '**locus standi**' as he had not produced any document to demonstrate that he was the personal representative of his mother's estate; neither had his siblings shown any interest in their grandfather's estate as they were content with the property they had in Kinangop;

17. He stated that the applicant had previously never shown any interest in their grandfather's estate; and he too suspected that the newly found interest and the instant application were fueled by greed and in connivance with the 3rd respondent who had brought a similar application which was later withdrawn;

18. The 4th respondent prayed that the application be dismissed.

ISSUES FOR DETERMINATION

19. After reading the affidavits and taking into consideration the rival written submissions of the respective parties this court has framed the following issues for determination;

- i. Whether the applicant has '**locus standi**' to file the instant application;
- ii. Whether the applicant has made out a case for revocation of the grant;

ANALYSIS

Whether the applicant has 'locus standi' to file the instant application:

20. Before addressing the issue as to whether the applicant has established the requirements of Section 76 of the Law of Succession this court will address the Preliminary Objection raised on the applicant's '*locus standi*'.

21. The applicant states that he is the son of Hannah Wangechi Ndonga who was a daughter of the deceased; his mother's demise occurred on the 5/10/2005; the applicant even annexed a copy of his mother's death certificate in support of her demise;

22. When filing the application it is noted that the applicant did not annex any Grant of Letters of Administration whether limited or otherwise to demonstrate that he was the personal representative of his mother's estate;

23. The applicant is also required by law to truthfully declare to the court all persons who would be entitled to a share in the estate; this is done by the production of a Chief's letter which will firstly, demonstrate that he is indeed a son of the late Hannah Wangechi Ndonga; secondly the said chiefs letter sets out the names of any surviving spouse and children of the deceased and persons entitled to benefit from the estate;

24. The applicant is also required to annex the consents of his surviving parent and his surviving siblings; the court record does not bear any such consents;

25. There being no documentation to establish that the applicant was a surviving relative of the deceased Hannah this would mean that there is also no evidence to assist this court in determining the degree of consanguinity of the applicant and the deceased herein; the applicant therefore has no legal basis in bringing the instant application;

26. This court finds that no material has been placed before it and therefore in the absence of any proof, the applicant is found to have no '*locus standi*' and has no right to appear on behalf of the estate of the late Hannah Wangechi Ndanga or to be heard in these current proceedings;

27. Having found that the applicant has no '*locus standi*' this court will not be labour itself in addressing the second issue as to whether the applicant has established the requirements of Section 76 of the Law of Succession;

28. The Preliminary Objection is therefore upheld; the application is found to be premature and incompetent.

FINDINGS AND DETERMINATION

29. For the forgoing reasons this court makes the following findings and determinations

- i. The applicant is found to have no '*locus standi*' and has no right to appear on behalf of the estate of the late Hannah Wangechi Ndonga;
- ii. The application for the revocation of the grant is found to be premature and incompetent and it is hereby struck out;
- iii. The applicant shall bear the costs of this application.

Orders Accordingly.

Dated, Signed and Delivered Electronically at Nyeri this 15th day of October, 2020.

HON.A.MSHILA

JUDGE