



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

SUCCESSION CAUSE NO. 150 OF 2014

IN THE MATTER OF THE ESTATE OF M'IKIUGU MUGERA-(DECEASED)

TABITHA MUTHONI GATOBU.....PETITIONER

VERSUS

CATHERINE KINANU KIRIMI.....1<sup>ST</sup> INTERESTED PARTY/APPLICANT

MARTIN KIMATHI KIRIMI.....2<sup>ND</sup> INTERESTED PARTY/APPLICANT

RULING

1. **M'Ikiugu Mugera**(*the deceased herein*) died on 8<sup>th</sup> December 1974. At the time of his demise he was domiciled at Kithirune West Location. As per the introduction letter of the area chief dated 3<sup>rd</sup> June 2013 the deceased left behind the following beneficiaries i.e. **Mungatia Ikiugu Mugera, Tabitha Muthoni Gatobu, Grace Kajuju Mwirigi, Kiriimi Murega M' Ikiugu.**

2. On 11<sup>th</sup> April 2014 **Tabitha Muthoni Gatobu**(*the petitioner herein*) petitioned for letters of administration. The same was gazetted on 25<sup>th</sup> July 2014 and grant of letters of administration issued on 4<sup>th</sup> September 2014. On 4<sup>th</sup> June 2014 the Petitioner swore an affidavit swearing that the whereabouts of **Kiriimi Murega M'Ikiugu** remains unknown and that she shall provide for his wife and children. She subsequently filed summons for confirmation of grant on 30<sup>th</sup> March 2017 proposing her mode of distribution of the estate at Paragraph 4 of her affidavit. **Mungatia Ikiugu Murega** filed a further affidavit dated 19<sup>th</sup> January 2018 giving his proposal at paragraph 2 of his affidavit.

3. On 1<sup>st</sup> February 2018 the application for confirmation of grant was allowed in terms of the sworn affidavit of **Mungatia Ikiugu Murega**. A certificate of confirmation of grant was therefore allowed in the following terms;

| <u>Name</u>                                   | <u>Description of the Property</u> | <u>Share of Heir</u> |
|---|------------------------------------|----------------------|
| <b>MungatiaIkiuguMugara</b>                   | <b>Abothuguchi/Kithirune/704</b>   | <b>1.70 Acres</b>    |
| <b>KiriimiMiKiuguMugera</b>                   | <b>Abothuguchi/Kithirune/680</b>   | <b>0.42 Acres</b>    |
| <b>Abothuguchi/Kithirune/295 (2.90 Acres)</b> |                                    |                      |
| <b>MungatiaM'IkiuguMugera</b>                 | <b>"</b>                           | <b>1.45 Acres</b>    |
| <b>KiriimiM'IkiuguMugera</b>                  | <b>"</b>                           | <b>1.00 Acres</b>    |
| <b>Grace KajujuM'Ikiugu</b>                   | <b>"</b>                           | <b>0.45 Acres</b>    |
| <b>Nturukuma/2655-0.125 Acres</b>             |                                    |                      |
| <b>KiriimiM'IkiuguMugera</b>                  | <b>"</b>                           | <b>0.0625 Acres</b>  |
| <b>MungatiaIkiuguMugera</b>                   | <b>"</b>                           | <b>0.0625 Acres</b>  |
| <b>Nturukuma/1919-2 Acres</b>                 |                                    |                      |

4. On 8<sup>th</sup> July 2019 **Catherine Kinanu Kirimi and Martin Kirimi Mbobua** (*the interested parties herein*) in their capacities as wife and son to **Kirimi M'ikiugu Mugera** jointly filed an application seeking the revocation of the grant issued on 1<sup>st</sup> February 2018. It was their contention that they were not informed and/or involved in these proceedings. That the distribution of the estate was not a true reflection of the family settlement and user of the deceased estate. That the petitioner failed to disclose that the deceased had transferred L.r. No. Lr. Nturukuma 1731 to Mungatia M'ikiugu Mugera.

5. **Mungatia Ikiugu Mugera** opposed the application through Replying affidavit dated 9<sup>th</sup> August 2019. He averred that he obtained L.r. No. Nturukuma 1731 on his own and the same was never a property of the deceased.

6. In a further Reply dated 18<sup>th</sup> November 2019 sworn by **Catherine Kinanu Kirimi** she averred that the deceased had coffee plantation in L.r. No. Abtothuguchi/Kithirune/704 and 804 registered under No. 365 Mariara Farmers' Cooperative Society Limited. That out of the coffee cherries sold at Mariara Farmers' Cooperative Society Limited the society identified land in Nturukuma where members would be deducted their dues. That the deceased coffee which had numbers 365 and 1731 got Parcel Nos. Nturukuma/1457, 1919 and 2655. From the aforesaid parcels the same were granted to Kirimi M'ikiugu Mugera (Parcel No. 1919) Mungatia Ikiugu Mugera (Parcel No. 1457) and Parcel No. 2655 to both in common. He attached a copy of a letter dated 26<sup>th</sup> September 2019 from the Secretary Mariara Farmers' Co-operative Society Ltd and green cards for the suit properties to support her averment.

7. On 25<sup>th</sup> September 2019 the court directed the parties to canvass the application through written submissions. Only the petitioner filed its submissions which I have dully considered.

### Analysis and Determination

8. The circumstances in which a grant may be revoked or annulled are set out in **Section 76 of the Law of Succession Act** as follows:

**76 Revocation or annulment of grant 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 order or allow; 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.**

9. After hearing the arguments of the parties, I should determine, whether:-

**(a) The grant was obtained fraudulently by the making of a false statement (b) By the concealment from the court of something material to the case; or**

**(c) 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.**

10. The main issue contended by the interested party is that the petitioner failed to disclose to the court of their existence and never sought their consent before applying for letters of administration and that the petitioner equally failed to disclose that **Mungatia Ikiugu Mugeru** had been granted Parcel 1457 by the deceased during his lifetime. **In re Estate of Julius Ndubi Javan (Deceased) [2018] eKLR** the court in emphasising the need to make a material disclosure of facts held as follows;

**“Needless to state that, in any judicial proceeding, parties must make full disclosures to the court of all material facts to the case including succession cases. This general rule of law emphasizes utmost good faith (uberima fidei) from parties who take out or are subject of the court proceedings. The said responsibility is part of justice itself. Accordingly, non-disclosure of material facts undermines justice and introduces festering waters into the pure streams of justice; such must, immediately be**

subjected to serious reverse osmosis to purify the streams of justice, if society is to be accordingly regulated by law...”

11. On the first issue whether the petitioner failed to disclose their existence. Section 51 of the Law of Succession Act deals with the information that should go into an application for grant of representation. Under Section 51(2) (g) it is stated:-

“51(2). An application shall include information as to\_\_\_...

(g) in cases of total or partial intestacy, the names and addresses of all surviving spouses, children, parents, brothers and sisters of the deceased, and of the children of any child of his or hers then deceased...”

12. I have looked at the proceedings the Petitioner vide affidavit dated 4<sup>th</sup> June 2014 swore that the whereabouts of **Kirimi Mugera M’Ikiugu** remains unknown and that she shall provide for his wife and children. The certificate of confirmation of grant has dully provided for the aforesaid Kirimi Mugera M’ Ikiugu. The petitioner therefore disclosed the children of the deceased as mandated in **Section 51 of the Law of Succession Act**.

13. The second issue relates to the disclosure of assets granted during the lifetime of the deceased. Bequests made during the lifetime of the deceased ought to be taken into account. This is in accordance with Section 42 of the Law of Succession Act which provides as follows;

**42 Previous benefits to be brought into account**

Where—

(a) an intestate has, during his lifetime or by will, paid, given or settled any property to or for the benefit of a child, grandchild or house; or

(b) property has been appointed or awarded to any child or grandchild under the provisions of section 26 or section 35 of this Act, that property shall be taken into account in determining the share of the net intestate estate finally accruing to the child, grandchild or house.

14. **Inre Estate of MareteMbui alias M’MareteM’Mbui alias Justus Marete (Deceased) [2017] eKLRGikonyo J** made the following observation;

“Section 42 of the Law of Succession Act serves tow important purposes; one, it fend off selfish tendencies of human beings in seeking for double portions in the estate of the deceased; and two. It enables the court to attain equity in the sharing out of the estate property among the rightful beneficiaries....”

15. I have considered the evidence presented by the parties. It is clear that the suit premises in Parcel No. 145 was granted to Mungatia M’ Ikugu from proceeds acquired from the deceased shares in Mariara Farmers Society Limited as opposed to the same being acquired solely as alleged by the said Mungatia M’Ikugu. The letter from Mariara Farmers Society limited alludes to the benefit. Parcel No. 145 measures 2 acres the same considerably affects the mode of distribution of the estate of the deceased. The failure to disclose such previous benefit fall on material non-disclosure. I also do note that the daughters of the deceased have been granted a lesser share of the estate as opposed to the other beneficiaries of the estate. The proceedings show that the petitioner renounced her rights. Grace Kajuju sought for a share of the estate. Taking all this into consideration I do find that there is need for redistribution rather than revocation of the grant in this cause.

16. I have considered the evidence of the parties and the previous modes of distribution I find it just to redistribute the estate as follows;

| <u>Name</u>                 | <u>Description of the Property</u> | <u>Share of Heir</u> |
|-----------------------------|------------------------------------|----------------------|
| Mungatia Ikiugu Mugara      | ABOTHUGUCHI/KITHIRUNE/704          | 1.70 Acres           |
| Late Kirimi M’IKiugu Mugera | ABOTHUGUCHI/KITHIRUNE/680          | 0.42 Acres           |

*(To be held in trust by Catherine Kinanu and Martin*

*Kimathi Kirimi for themselves and for children of*

*Kirimi M’Ikiugu Mugera in equal shares.)*

**ABOTHUGUCHI/KITHIRUNE/295 (2.90 ACRES)**

**Mungatia Ikiugu Mugara “ 1.00 Acre**

**Kirimi M’IkiuguMugera “ 1.45 Acres**

*(To be held in trust by Catherine Kinanu and Martin*

*Kimathi Kiriimi for themselves and for children of*

*Kiriimi M'Ikiugu Mugeru in equal shares.)*

**Grace Kajuju M'Ikiugu** “ **0.45 Acres**

**NTURUKUMA/2655-0.125 ACRES**

**Kiriimi M'IkiuguMugeru** “ **0.0625 Acres**

*(To be held in trust by Catherine Kinanu and Martin*

*Kimathi Kiriimi for themselves and for children of*

*Kiriimi M'Ikiugu Mugeru in equal shares.)*

**Mungatia Ikiugu Mugeru** “ **0.0625 Acres**

**NTURUKUMA/1919-2 ACRES**

**Kiriimi M'IkiuguMugeru** “ **Whole**

*(To be held in trust by Catherine Kinanu and Martin*

*Kimathi Kiriimi for themselves and for children of*

*Kiriimi M'Ikiugu Mugeru in equal shares.)*

17. I therefore make the following Orders;

**(i) The Certificate of confirmation dated 1<sup>st</sup>February 2018 be and is hereby amended in terms of the orders issued above.**

**(ii) Costs of application to be borne by each party**

**HON ANNE ADWERA ONG'INJO**

**JUDGE**

**RULING DATED AND DELIVERED BY EMAIL ON THIS 1<sup>ST</sup> OCTOBER 2020**

**HON ANNE ADWERA ONG'INJO**

**JUDGE**

**In the presence of:-**

Mr Ringera Advocate for Petitioner/Respondent

Mr Gichunge Advocate for Applicant- No appearance.

**HON ANNE ADWERA ONG'INJO**

**JUDGE**