



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT EMBU

SUCCESSION CAUSE NO. 155 OF 2002

IN THE MATTER OF THE ESTATE OF NJAGI KANDII (DECEASED)

JANE CIUKINYUA.....1ST APPLICANT

CHARITY WANJUKI.....2ND APPLICANT

VERSUS

TERESIA MUTHANJE NJAGI.....1ST PETITIONER/RESPONDENT

JULIETA CIUMWARI NJAGI.....2ND PETITIONER/RESPONDENT

RULING

A. Introduction

1. This is a ruling for Summons for Revocation/annulment of grant dated 6th April 2018 seeking for orders of annulment of the grant issued on 22nd February 2002 and confirmed on 5th October, 2016.

2. The application is based on the following grounds: -

a) That the confirmation proceedings were defective in substance and form.

b) That the applicants were never consulted nor did they consent to the mode of distribution.

c) That the grant as confirmed has the effect of disinheriting some of the beneficiaries to the deceased's estate.

d) That the application for confirmation of grant was filed in disregard of the interests of applicants herein who are daughters of the deceased.

e) That it is in the interest of justice and event hardships that this application is sought.

3. The respondents filed a replying affidavit dated 31st May 2018 in which they deponed that the proceedings to obtain the said grant were conducted freely and with inclusion of all parties and further that all beneficiaries including the applicants got a share out of the said estate.

4. It was further deponed that this application was a delaying tactic as it did not satisfy conditions warranting revocation of grant.

B. Applicant's Submission

5. The applicants submitted that they had been discriminated against for being daughters as they were given land parcel no. Ngandori/Kiriari/3417 which was only a quarter acre to share amongst seven of them as daughters. It was further submitted they were not consulted in regard to the distribution of their deceased father's estate. **Article 27 of the Constitution of Kenya** as well as the case of **Mary Wangari Kihika v John Gichuhi Kinuthia & 2 Others [2015] eKLR** were relied on by the applicants.

C. Respondents' Submission

6. The respondents submitted that the grant was not issued in disregard of the applicants' interest as they were represented in court by their

mother who is the 2nd administrator whom they had omitted from their application. It was further submitted that the applicants were in court during the proceedings for grant and even consented to the mode of distribution.

7. It was further submitted that the reason why all daughters hold land parcel Ngandori/Kiriari/3417 was because that was the allocation the deceased had given to his daughters prior to his death as he had done to other beneficiaries who had long before the deceased's demise settled on their respective portions and developed them extensively.

D. The Determination

8. I have carefully considered the affidavit and evidence by both parties and also the relevant law and authorities and in my view, the issues for determination are **(i) whether or not the applicants have demonstrated sufficient grounds for court to revoke the grant as provided for under Section 76 of the Law of Succession Act** which provides that: -

“A grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by an 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 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 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. “

9. The above provision was construed by the court of appeal in the case of **Matheka and Another vs Matheka [2005] 2 KLR 455** where the court of appeal laid down the following guiding principles.

“i. A grant may be revoked either by application by an interested party or by the court on its own motion.

ii. Even when revocation is by the court upon its own motion, there must be evidence that the proceedings to obtain the grant were defective in substance, or that the grant was obtained fraudulently by the making of a false statement or by concealment of something material to the case or that the grant was obtained by means of untrue allegation of facts essential in point of law or that the person named in the grant has failed to apply for confirmation or to proceed diligently with the administration of the estate.

10. The grounds upon which a grant may be revoked or annulled are thus statutory and it is incumbent upon any party making an application for revocation or annulment of a grant to demonstrate the existence of any, some or all the above grounds.

11. A perusal of the court record reveals that the respondents at all times involved the applicants in the proceedings as they sought confirmation of grant. Further it is on record that one of the administratrix, Niceta Runji Njagi is the mother of the applicants herein and that the applicants herein and herself fully participated in the confirmation proceedings, all applicants were given due notice as this court had directed. The Applicants can thus not turn and claim to not have been involved in the proceedings. One Niceta Runji Njagi a co-administrator was not included in this application for reasons not given in the application.

12. I have also considered the allegations by the applicants that they are being discriminated against and find them unfounded. It is on record that the deceased had distributed a lot of his estate prior to his death and the beneficiaries had settled therein.

13. It is in appreciation of this that this court through the Deputy Registrar wrote on the 23rd April 2014 to the Chief Ruguru Location to make a report to court ascertaining among other things identify *“which parcel/s of land are available for distribution.”*

14. In his response filed in court on the 28th May 2014, the aforementioned Chief reported that the land available for distribution was Ngandori/Kiriari/3408 measuring 1.51 ha. and Ngandori/Kiriari/3417 measuring 0.16 ha. It is worth noting that both these parcels were distributed to the applicants and their other sisters who had not benefited from the deceased's estate. There was no discrimination against the applicants.

15. The upshot of the above is that I find the applicants have failed to satisfy the conditions for revocation of grant as set out in Section 76 of the Act. The application for revocation of grant thus lacks merit and is hereby dismissed in its entirety.

16. It is hereby so ordered.

DELIVERED, DATED AND SIGNED AT EMBU THIS 16TH DAY OF JANUARY, 2019.

F. MUCHEMI

JUDGE

In the presence of; -

Ms. Maroko for Andande for Applicants

Mr. Wachira for Ms. Migwi for Respondent