



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

SUCCESSION CAUSE NO. 1665 OF 2002

IN THE MATTER OF THE ESTATE OF GATUNDU WANJAGI alias EDWARD GATUNDU WANJAGI (DECEASED)

JENIFFER WANJIKU GATUNDU

MARY NYAMBURA GATUNDU.....OBJECTORS/APPLICANTS

VERSUS

WANGUI GATUNDU

JAMES MWANGI GATUNDU.....ADMINISTRATORS/RESPONDENT

JUDGMENT

BACKGROUND

The deceased **GATUNDU WANJAGI alias EDWARD GATUNDU WANJAGI** died intestate on 19th October 2001. Wangui Gatundu widow of deceased; John Wanjagi Gatundu and James Mwangi Gatundu sons of the deceased filed petition for grant of letters of administration intestate was issued to the administrators/ respondents jointly on 1st April 2009 and confirmed on 26th May 2010 and all properties were in the name of the widow of the deceased.

APPLICANTS' CASE

The Applicants daughters of the deceased filed summons dated 23rd February 2018 seeking orders that: Pending the hearing and determination of the application , the court do issue preservative and or conservatory order to preserve the deceased's entire estate; the honourable court be pleased to set aside the orders made on 26th May 2010 confirming the grant and mode of distribution of the deceased's estate; and that the honourable court be pleased to compel the respondents to give accurate account of all rent collections from the deceased's properties with effect from October 2001.

The application was supported by the affidavit of the 1st applicant dated 23rd February 2018. It was her case that she was a daughter to the deceased; that their father the late Gatundu Wanjagi alias Edward Gatundu Wanjagi was survived by the widow ,1st petitioner and 8 children;

John Wanjagi(deceased),

Geofrey Waititu Gatundu,

James Mwangi Gatundu,

Washington Kiiru Gatundu,

Peterson Kariuki Gatundu,

Jennifer Wanjiku Gatundu,

Mary Nyambura Gatundu and

Mishek Githongori Gatundu;

A grant of the letters of administration was issued to the petitioners and John Wanjagi Gatundu and rectified upon the demise of John Gatundu; that the grant was confirmed on 26th May 2010 without the applicants/objectors involvement or knowledge; that the respondent did not seek their consents during confirmation but proceeded by forging the applicants' signatures; that in the certificate of the confirmed grant the 1st petitioner is named as the sole beneficiary; that the respondents have resorted to disposing some of the deceased's assets by way of sale without regard to the objectors interests who have equal rights; that the respondents collected rent from all rented premises approximately kshs. 1,000,000/= and proceeds shared among them without regard to other beneficiaries; that before the deceased's demise he had given all of them some of his properties for their use which were generating income in form of rent; that the objector was given Makadara property comprising of 5 floors being **L.R No. 209/4401/664, L.R No. 209/4401/665, L.R No. 209/4401/668 and L.R No. 209/4401/669**; that she resided on the said property from the year 1999 until December 2006 when the respondents evicted her on the basis that they needed to construct modern flats after which she would re occupy the property. However, the Respondents shared the property amongst themselves; that it was/is in the interest of justice that the court issue conservatory orders and the distribution of the deceased's estate which was done without the applicant's consent be set aside.

RESPONDENTS' CASE

The application was opposed by the respondents/ administrators. It was their case was that the applicants were active participants in the process and duly consented to the issuance of grant by appending their respective signatures to the consent forms. It was further their case that the assets of the deceased devolved to the widow in accordance to **Section 35 and 37 of the Law of Succession Act** who thereafter she gave the applicants and their children several properties. He averred that the wife of their late brother John Wanjagi, Teresia Wangui and their son were also given property and that the allegations she had been left out were false. It was their case that the 1st respondent had the right to a life interest of the net estate of the assets of the deceased. They averred that they did not collect the alleged rental income of kshs. 1,000,000/= however minimal rent collected from the Eastleigh property was used as upkeep for the widow, 1st respondent; it was further their case that they did not evict the 1st applicant from the Makadara premises but she did that on her own accord upon marriage and upon her separation from her husband in 2013, she demanded her share of the estate. They stated that both the grant and certificate of confirmation had followed due process and as such the application to have the summons revoked should be dismissed.

HEARING

The matter proceeded for oral hearing. **PW1 and PW2**, Jenniffer Wanjiku and Mary Nyambura Gatundu testified on **9th July 2018**, they reiterated the contents of their affidavits. It was their evidence that the distribution of the deceased's estate was done without their involvement as beneficiaries with equal rights and shares in appointment of administrators, issuing of grant and confirmation of grant. PW1 stated that during her father's life he bequeathed her the property in Makadara. She lived there until the 2nd Respondent issued her an eviction notice. She moved to Umoja Innercore. She alluded to the fact that the administrators renovated and upgraded the property with funds from the deceased's accounts. **PW2** stated that her father built her a house in **Kayole** and she was brought to **Makadara** where **PW1** lived. They have been left out in distribution of income from rent receivables from properties that comprise the deceased's estate and in allocation, use and development of the said properties.

DW1, James Mwangi Gatundu and **DW2**, Wangui Gatundu administrators of the deceased's estate testified on 24th July 2018. DW1 stated that he did not evict the Applicant from Makadara, instead she was married and moved out of the premises. After the grant was confirmed DW2 their mother who is entitled to life interest nevertheless distributed some properties to the children of the deceased. He was bequeathed **Makadara property, Umoja** was given to his sons.

The Applicants went to the advocate's office and signed written consents to petition for grant of letters of administration and confirmation of grant.

DW1 further informed Court that the Properties were preserved for generation of rental income which was used to develop renovate and increase properties in Makadara, Umoja Innercore, Civil Servants Kariobangi, Mbotela, Biafra, California, Pumwani and Eastleigh.

DW2 Grace Wangui Gatundu widow of the deceased and one of administrators of the deceased's estate told the Court that she was left properties of the deceased's estate and knows all about them.

She had given each of her children property but was aggrieved that the Applicants had brought her to Court and they filed many other cases against her. She told the Court she was helped by DW1 Co administrator to manage the estate. The Applicants took her to the Chief in Kayole and she gave them property and she will give no other properties. She claimed that the 1st Applicant was not bequeathed Makadara Property by the deceased. She never lived in Makadara and was married and she lived in **Thika**.

DETERMINATION

The parties filed their submissions which I have read and considered. It was the applicants' submissions that the application for grant was unlawful, illegal and void as it failed to take into account the applicant's identities as beneficiaries of the deceased estate and their respective shares. Consequently they sought for revocation of the grant

The respondents submitted that the applicants were at all times involved in the process of obtaining the grant and that the applicants had failed to prove that process of obtaining the grant was defective, marred with fraud, concealment of material facts based on false statement and or untrue allegations.

The circumstances that can lead to the revocation of grant have been set out in **Section 76 Law of Succession**. For a grant to be revoked

either on the application of an interested party or on the court's 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 making of false statement, or by concealment of something material to the case, or that the grant was obtained by means of untrue allegations of facts essential in point of law.

In the case of **ALBERT IMBUGA KISIGWA V RECHO KAVAI KISIGWA, SUCCESSION CAUSE NO.158 OF 2000**, Mwita J. in a decision rendered on 15th November, 2016, noted thus:

[13] Power to revoke a grant is a discretionary power that must be exercised judiciously and only on sound grounds. It is not a discretion to be exercised whimsically or capriciously. There must be evidence of wrong doing for the court to invoke Section 76 and order to revoke or annul a grant. And when a court is called upon to exercise this discretion, it must take into account interests of all beneficiaries entitled to the deceased's estate and ensure that the action taken will be for the interest of justice.

Mativo J. similarly in his decision of 29th January, 2016, in the case of **ANGELAS MAINA V REBECCA WAIYEGO MWANGI & ANOTHER, SUCCESSION CAUSE NO. 692 OF 2012**, stated thus;

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 grant to demonstrate the existence of any, some or all the above grounds. A close look at Section 76 shows that the grounds can be divided into two categories:- the first two deal mainly with the propriety of the grant making process; the other grounds deal mainly with mal-administration i.e personal representatives have not been effective in administration.

With regard to the instant case; although it is not denied, that the Applicants

Are daughters ;children of the deceased. They were named in the Petition for grant of letters of administration but there no written consents to appointment of administrators and obtaining grant of letters of administration as required by **Rule 26 of Probate and Administration Rules** which requires notice to every other person entitled in the same degree as or in priority to the Applicant (s)and to obtain written consents from them before applying for grant.

The Court record contains no such consents both in filing petition for grant of letters of administration and confirmed grant. Similarly, the Court proceedings do not contain proceedings that confirm all beneficiaries were in Court and/or signed consents to the mode of distribution of the estate of the deceased.The Consent to confirmation of grant form has names of the Applicants and signatures that are contested. No witness was called to confirm that they gave the Applicants the consent form to sign and/or they witnessed the signing of the document of consent to confirmed grant. Lastly, no one testified on whether the Applicants were present in Court during confirmation of grant proceedings in 2010. The Court record is blank and does not contain proceedings that reflect/confirm that the Applicants attendance/presence in Court during confirmation of grant proceedings.

Therefore; the procurement of grant and confirmed grant was/is defective as some of the beneficiaries were not consulted, did not consent and were not present in Court during the crucial proceedings.

Secondly, the confirmed grant was/is issued to DW2 Grace Wangui Gatundu widow of the deceased and 2 sons. The widow enjoys life interest on the property. However in her testimony she claimed to have bequeathed properties to some of her children. She also admitted having developments on the properties aided by her son Co administrator DW1 which increased revenue in rent collection. The income generated is partly from properties the Applicants alleged were bequeathed as gifts intervivos to them by the deceased but have since been evicted, properties developed and they have been left destitute. Although this Court could not determine the actual facts due to accusations and counteraccusations the disclosure of various cases over the estate confirm that the estate is not administered and managed to benefit the beneficiaries of deceased's estate as a whole.

After carefully examining the application for revocation of grant and the application before me, and upon analysing the law, authorities and submissions made by both parties and the evidence adduced; I find that the applicant has established sufficient grounds for the court to allow the application before me for the interests of justice.

DISPOSITION

- 1. In view of the foregoing, the application dated 23rd February 2018 is granted.**
- 2. Anew/fresh grant shall have the following persons as administrators of the estate of the deceased under Section 66 of the Law of Succession Act Cap 160;**
 - a) Grace Wangui Gatundu –widow of the deceased**
 - b) James Mwangi Gatundu- son of deceased**
 - c) Janeffer Wanjiku Gatundu- daughter of the deceased**
- 3. The administrators shall convene meeting(s) to consult and agree on distribution of the deceased's estate and file summons of confirmation of grant.**
- 4. Any of the aggrieved party may file affidavit of protest to be determined by the Court.**

DELIVERED SIGNED & DATED IN OPEN COURT ON 5TH FEBRUARY 2019

M.W.MUIGAI

JUDGE

IN THE PRESENCE OF:

.....for the Objectors/Applicants

.....for the Administrators/Respondents

Jasmine- Court Clerk