



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 1671 OF 1993

IN THE MATTER OF THE ESTATE OF GRACE NYAMBURA WARUINGI (DECEASED)

JOHN WAWERU WARUINGI.....1ST APPLICANT

KAGAI WARUINGI.....2ND APPLICANT

LIVINGSTONE GICHERU WARUINGI.....3RD APPLICANT

VERSUS

NJUGUNA WAWERU.....1ST RESPONDENT

JANE WANJIRU NJERI.....2ND RESPONDENT

RULING

1. The applicants have come before this court vide summons for revocation of grant dated 15th January, 2016. They have asked this court to revoke a grant of representation issued to Njuguna Waweru and Jane Wanjiru Njeri on 11th September, 2012, confirmed on 3rd May, 2013 and amended on 20th March, 2014 by the Chief Magistrate's Court at Kiambu vide Kiambu Succession Cause No. 47 of 2012. They set out their reasons for so applying in the application, the affidavits in support and the written submissions filed herein.

2. The major grounds given are:-

a) That during the pendency of these proceedings, the Respondents herein fraudulently and secretly filed a Succession Cause over the same Estate in the Chief Magistrates Court at Kiambu being **Kiambu Succession Cause No. 47 of 2012** and obtained letters of administration intestate and had the same confirmed without disclosing material facts.

b) That the Respondents have now embarked on wasting, alienating, sub-dividing and/or transferring the estate of the deceased to the detriment of the interests of the rightful heirs, putting the entire estate at risk.

3. Their prayer is that all proceedings in the Kiambu Succession Cause be revoked in their entirety.

4. The 3rd Applicant swore an affidavit dated 15th January, 2016 in support of the Summons for Revocation of Grant. He declared that he had authority to swear the affidavit on his own behalf and on behalf of the other applicants. He asserted that he was a step-son to the deceased who died on 29th June, 1993 leaving behind one son namely Peter Kagai Waruingi who also died having not married or sired any children. That, he and his co-applicants were the only surviving step-children of the deceased who was the 5th wife of their deceased father.

5. Further, it was alleged that the Respondents intentionally failed to disclose the material facts of the applicant's existence, the existence of this suit before Court and the existence of parties who had an interest in the suit. Through that willful non-disclosure and misrepresentation, the Respondents fraudulently obtained letters of administration. It was his averment that, when the matter came to Court, the Principal Registrar of the High Court of Kenya erroneously stated that no grant had been applied for when the Registrar Kiambu District informed the office of the pending application for letters of administration in the deceased's estate.

6. The said application for letters of administration had been lodged by Njuguna Waweru and Jane Wanjiru who had claimed to be a father and granddaughter to the deceased respectively.

7. The 3rd Applicant further claims that, subsequent to filing the petition in the Kiambu Cause, the petitioners failed to notify the dependants in the estate of the existence of the petition. Further that the Court entertained the matter yet it lacked pecuniary jurisdiction and also

jurisdiction on land matters which involved the removal of cautions on various parcels of land. It is alleged that after the confirmation of the fraudulent letters of administration, the Respondents embarked on wasting the estate of the deceased to the detriment of the rightful heirs.

8. The Application was opposed. The 1st Respondent filed a Replying affidavit dated 18th April, 2016 on his own behalf and on behalf of the 2nd respondent. He deponed that he was the maternal grandfather of the 2nd respondent together with GMK and JWK who were said to be the children of his deceased daughter Susan Njeri. He alleged that the said Susan Njeri was married to Peter Kagai Waruingi an only child to the deceased herein through Agikuyu customary laws. Their union was blessed with the children who are claimed to be beneficiaries of the deceased's estate.

9. Further, he refuted the allegations by the Applicants that the deceased's son was neither married nor had children. He insisted that the applicants were not rightful dependants to the estate of the deceased.

10. In a further affidavit dated 3rd February 2017, the 3rd Applicant averred that in 2015, the applicants were able to trace the deceased's sister Mary Wakonyo. It is alleged that she swore an affidavit confirming that the 1st Respondent herein was neither her father nor the deceased's father as alleged in Kiambu Succession Cause 47 of 2012 as their father's name was Charles Karuku Kage alias Karanu. She also affirmed that the deceased had only one child who was now deceased having not been married or sired any children. It is also alleged that in an effort to determine the true identity of John Waruinge Kagai, they approached the Directorate of Criminal Investigation who informed them that the said individual sat for his K.C.P.E examination in 2010 using the name Wanjiru Johnson Kagiri. That the said name had absolutely no ties with the deceased's family.

11. The application was disposed of by way of viva voce evidence. Two witnesses testified in support of the Summons while three witnesses testified in opposition to the Summons for Revocation of grant.

12. The 3rd Applicant reiterated the contents of his affidavits. He testified that the deceased's son Peter Kagai was the administrator of the estate of the deceased. He died in 1997 without having administered the estate and he did not leave behind a wife or children. The 3rd Applicant testified that his father was survived by four wives including the deceased herein and that prior to his death he had distributed property to all his wives.

13. In her testimony, Mary Wakonyo Wambugua asserted that she was a sister Grace Nyambura Waruingi, the deceased. Her father was named Karuku wa Kage. She stated that she was not informed when the Succession Cause over the estate of her deceased's sister was lodged.

14. The 1st Respondent testified that the deceased's son Peter Kagai was married to his daughter Njeri Njuguna. He reiterated that their union was blessed with three children; Peter, Wanjiru and Muthoni who lived with him. That the union was conducted under Agikuyu customary law with the 2nd Applicant being among individuals who brought the dowry. He denied allegations that he had knowingly and willfully stated in the affidavit in support of summons for confirmation of grant that he was the father to the deceased. He averred that that was an error. He also denied knowledge of the filing of any succession claim to the estate of the deceased prior to the filing of the summons in Kiambu.

15. Jane Wanjiru Njeri also gave evidence in opposition to the summons. It was her testimony that the deceased was her maternal grandmother, herself being a daughter to the deceased's son (Peter Kagai) and his wife, Susan Njeri. She stated that the applicants herein were her step-uncles by virtue of their mother being Co-wives to her grandmother. She therefore expected them to have received a share of the estate from their mother and not her grandmother. She testified that she and her siblings were entitled to their grandmother's share of the estate.

16. During her father's death, she stated that they were not living with him. She alleged that she did not know that there was a pending succession cause on the estate of the deceased when they filed the matter in Kiambu court. She denied claims that the 1st Respondent had declared himself to be the father to the deceased in the Kiambu Cause. She also asserted that since confirmation of the grant, the property had been subdivided and was ready for distribution to the beneficiaries.

17. Paul Njenga the area Chief gave his testimony on behalf of the Respondent. He stated that the deceased had one son, Peter Kagai who has since passed on. It was his testimony that the said Peter Kagai had a wife who is also deceased. He claimed that they had three children namely; Muthoni Kagai, Jane Wanjiku Kagai and JWK. He stated that there was hostility and animosity towards Peter Kagai from his step siblings who later chased his children away after he died. The reason advanced was that the step siblings did not want the deceased to inherit any property. Since then, Peter Kagai's children have been living in abject poverty under the care of their maternal grandfather.

18. After a careful consideration of the affidavits on record, the testimonies of witnesses and the submissions of learned counsels, the issues that arise for determination are:

- a) Whether the Respondents herein fraudulently and secretly filed a Succession Cause over the Estate of the deceased during the pendency of this cause.
- b) Whether the grant issue thereon should be revoked

19. The jurisdiction of this court to revoke a grant is set out in section 76 of the Law of Succession Act, Cap 160 of the Laws of Kenya.

20. The grant sought to be revoked was issued to Njuguna Waweru and Jane Wanjiru Njeri on the 11th September, 2012, confirmed on 3rd May, 2013 and amended on 20th March, 2014 by the Chief Magistrate's Court at Kiambu vide Kiambu Succession Cause No. 47 of 2012. It

was alleged that during the pendency of this proceedings, the Respondents herein fraudulently and secretly filed the Succession Cause over the same Estate in the Chief Magistrate's Court at Kiambu resulting in the issuance and confirmation of the grant. On the other hand, the Respondents stated that they were never made aware of the instant Cause, but had every right to Petition for letters of Administration Intestate as the rightful beneficiaries to the estate of the deceased.

21. The issue under consideration is whether the Petition seeking letters of Administration for the estate of the deceased was filed secretly and fraudulently concealing material facts of the existence of this instant suit. From the record, it is not in dispute that two petitions were filed regarding the estate of the same deceased person being, Kiambu Succession Cause No. 47 of 2012 and the instant suit. The Respondents petitioned for letters of administration on 17th February, 2012 while the instant petition was filed in 1993.

22. From the evidence adduced, the Respondents claimed to be the rightful beneficiaries to the deceased's estate while the applicants deny any knowledge of the existence of the respondents. What is in issue is whether the Succession Cause 47 of 2012 at Kiambu was filed secretly and whether the Respondents fraudulently concealed information and misled the Court to issue the grant.

23. It was alleged the Respondents in petitioning for letters of Administration to the estate of the deceased failed to disclose material facts of the applicants' existence and the existence of the instant suit, failed to notify the dependants of the estate of the deceased, misrepresented themselves as beneficiaries and also, that the Petition was brought before a Court lacking pecuniary jurisdiction. In response, to these allegations, the respondents stated that they were the rightful heirs to the estate and were unaware of the instant suit pending before court. They also stated that the Applicant had no claim to the estate and the grant issued to them was legally obtained.

24. The main issue is whether the application meets the threshold set by Section 76 of the Succession Act on Revocation of grant. As Succession Cause No. 47 of 2012 before the Chief Magistrate's Court in Kiambu has been vastly mentioned in these proceedings, I called for it.

25. The cause was filed on 17th February, 2012 by Njuguna Waweru and Jane Wanjiru Njeri, who described themselves as father and granddaughter of the deceased in the affidavit in support of the petition. They also swore that the deceased was survived by two minors namely GMK (Granddaughter) and JWK (Grandson). A grant of letters of administration intestate was made to them on 11th September, 2012. They had the grant confirmed on 3rd May, 2013 and amended on 20th March, 2014.

26. The scenario before me is that following the death of Grace Nyambura Waruingi, two succession causes were filed by two different sets of persons. Grants of representation were made and confirmed in both.

27. It must be stated from the outset that there can only be one grant of representation to the estate of one individual. It is therefore untenable that there are two grants and two sets of administrators in respect of the same estate.

28. However, it is on record that the instant suit was filed in 1993 way before the Kiambu Cause was filed in 2012. Within this time, 20 years lapsed. The Respondents claim not to have been aware of the pendency of this instant suit. Within that time, the deceased's son petitioned and received confirmation for letters of administration of the deceased's estate.

29. The applicants also maintained that the grant was obtained by means of an untrue allegation of fact essential in point of law to justify the grant. The applicant alleged that the 1st and 2nd Respondents are not Father and Granddaughter to the deceased as alleged. Evidence adduced from the deceased's sister confirmed that 1st Respondent was indeed not the deceased's father. On his part the 2nd Respondent testified that, the claim that he was a father to the deceased was made erroneously which he sought to correct. He therefore admitted that he was not a father to the deceased.

30. On whether the 2nd Respondent was a Granddaughter and a dependant to the deceased, I will not belabour at this Point. At this point, it is my determination that the applicants have been able to demonstrate to my satisfaction that an untrue allegation was made in the Kiambu petition.

31. The fact that the 2nd Respondent misrepresented himself as the deceased father when he was not, a fact which led the Court to make the grant to him, is enough proof that the grant was obtained by means of an untrue allegation of fact essential in point of law to justify the revocation of grant notwithstanding that the allegations was made in ignorance or inadvertently.

32. On the issue of jurisdiction, the applicants averred that the Chief Magistrate's Court at Kiambu lacked pecuniary jurisdiction to entertain the claim. However, no value of the estate was given. The applicants therefore did not lay a basis for the prayer sought to revoke the grant for want of jurisdiction by the said Court. Courts of law do not operate on the basis of assumptions and speculation.

33. What is clear, is that the filing of Succession Cause No. 47 of 2012 at Kiambu was done during the pendency of the instant suit. The subsequent grant was issued on account of the information supplied by the Petitioners who are the Respondents herein. The Court relied on information given and issued orders on account of the Petitioners making a false statement and concealing something material to the case. Both orders on confirmation of grant cannot obviously stand simultaneously.

34. In view of the foregoing, I find that the Applicants have established a case for the revocation of the grant herein as prayed. In the premise, I allow the application for revocation of grant filed by way of summons dated 15th January, 2016 and order as follows:

- i) The Grant of Probate to the estate of Grace Nyambura Waruingi (deceased) made to Njuguna Waweru and Jane Wanjiru Njeri, confirmed on 3rd May, 2013 and amended on 20th March, 2014 at Kiambu Succession Cause No. 47 of 2012 before the Chief Magistrate's Court be and is hereby revoked.

ii) The proceedings before the Chief Magistrate's Court in Kiambu Succession Cause no. 47 of 2012 are hereby declared a nullity.

iii) There shall be no orders as to costs.

SIGNED DATED AND DELIVERED IN OPEN COURT THIS 13TH DAY OF MARCH 2019.

L. A. ACHODE

HIGH COURT JUDGE

In the presence of Advocate for the Applicants

In the presence ofAdvocate for the Respondents