



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO.305 OF 2012

**IN THE MATTER OF THE ESTATE OF NJERI KIARIE KANYANGA alias MONICA NJERI
KIARIE DECEASED**

RULING

1. The Application coming for consideration in this Ruling is the Summons for revocation dated 6.2.2012 filed by the Objector herein LUCY WANGUI NJERI alias RUTH WANGECHI seeking the following orders.

(i) That there be a temporary injunction restraining the Administrator herein Joseph Kariuki Kiarie from transferring or in any way purporting ownership of parcel of land KIAMBU/MUNICIPALITY/BLOCK 5 (KIAMUMBI) 2656 by himself or through agents.

(ii) THAT a restriction order be registered by the Registrar for Lands Kiambu against any dealings on the land until the revocation is heard.

2. The Application is supported by the Affidavit of LUCY WANGUI NJERI alias RUTH WANGECHI the Objector herein in which she has deposed as follows in part;

(i) THAT the deceased herein NJERI KIARIE KANYANGA alias MONICA NJERI KIARIE (Deceased) died intestate on 4.7.2010.

(ii) THAT the application is the daughter of the deceased having been adopted together with another boy called PETER WAMBUGU ON 15.12.1989.

(iii) THAT the deceased changed her names to LUCY WANGUI NJERI and she assured full responsibility over her.

(iv) THAT after the deceased's death, the Petitioner herein JOSEPH KARIUKI KARANJA invaded their house and took all documents of ownership of the deceased's properties.

(v) THAT the said JOSEPH KARIUKI KARANJA petitioned for Letters of administration in relation to the estate of the deceased and the grant was issued on 17.5.2011 and confirmed on 20.7.2011 with a period of less than 6 months.

(vi) THAT the Petitioner concealed from court material facts and excluded particular shares at KIAMUMBI MULTI-PURPOSE CO-OPERATIVE SOCIETY from the deceased's assets.

(vii) THAT the objector is seeking revocation of the grant as the same was fraudulently obtained.

3. The Petitioner filed a Replying Affidavit dated 3.4. in which he deposed as follows:

- (i) THAT the Objector's prayers in the summons for revocation has been overtaken by events.
- (ii) THAT upon the conclusion of Succession Cause No. 19/2011 the Petitioner became the registered proprietor of land Parcel No. KIAMBU/MUNICIPALITY BLOCK 5 (KIAMUMBI) 2656.
- (iii) THAT the Petitioner disposed of the aforesaid parcel to one JOHN NJOROGE RERAI sometimes on 9.9.2011.
- (iv) THAT the Objector in this Case and her brother were not adopted by the deceased and that they returned to their natural parents at Njoro.
- (v) THAT the Objector's natural father one DAVID KURIA NG'ANG'A testified in NAIROBI CHILDRENS CASE NO. 3018/99 where the Objector's brother had complained of neglect.
- (vi) THAT the shares at KIAMUMBI MULTI-PURPOSE CO-OPERATIVE SOCIETY were sold or allocated to one PHILIP KURIA MUKUHA by the deceased.

4. The Objector and the Petitioner gave viva voce evidence and they were cross-examined. The two essentially retaliated what they have deposed in their affidavits save that the Petitioner said he later discovered the deceased had left a will bequeathing her property to him.

5. I have carefully considered the evidence herein together with the submissions filed by both parties.

The issues for determination in this case are as follows:

- (i) Whether the objector was an adopted daughter of the deceased.
- (ii) Whether the Petitioner obtained the grant of representation of the deceased's estate fraudulently and consequently, whether the same should be revoked.
- (iii) Whether the Property the subject of this case should be restituted to the objector.
- (iv) Who pays the costs of this suit?

6. On the issue as to whether the Objector was an adopted daughter of the deceased, I find that there is evidence that the deceased had taken the Objector and her brother one Peter Wambugu and she fostered them.

7. The Objector said the deceased changed their names to bear the name Njeri. However, the objector did not produce any adoption order in Court and there is evidence that the Objector and the deceased were not together when the deceased died on 4.7.2010. The objector said that the Petitioner stole all the documents belonging to the deceased.

8. I find that there is evidence that the Petitioner was the one taking care of the deceased before she died. The objector said she was married and she used to visit the deceased.

9. I therefore find that it is possible that the Objector was adopted by the deceased. There is evidence that the objector registered a caution on the suit property which the petitioner removed before he disposed of the property.

10. The Objector and her brother were not involved in the petition herein despite that the petitioner knew them as adopted children of the deceased. I find that the objector is entitled to inherit the property of the deceased.

11. On the issue as to whether the Petitioner obtained the Letters of Administration fraudulently, I find

that the petitioner said the deceased left him the suit property. The Petitioner produced a will purportedly written by the deceased giving the property to him.

12. However, the Petition filed herein shows that the deceased died intestate and I find that there was no oral or written will made available to this Court.

13. I find that the Petitioner obtained the grant as a sole beneficiary and his attempt to introduce a will after filing intestate succession is suspicious. There is evidence that he is not the sole beneficiary of the Estate as he has other siblings who are equally entitled to the Estate of the deceased.

14. I accordingly find that the grant of Letters of Administration intestate was fraudulently obtained and the introduction of the purported will after the confirmation of grant is suspicious. The petitioner obtained the letters secretly and he removed the caution without involving the objector herein.

15. I accordingly revoke the grant issued to the Petitioner on 7.5.2011 and confirmed on 20.7.2011

16. I also direct that the objector be issued with a fresh grant in respect of the estate of the deceased.

17. The property was sold fraudulently and I order that the said property be restituted back to the objector.

DELIVERED, SIGNED AND DATED IN OPEN COURT THIS 5th DAY OF APRIL, 2019

ASENATH ONGERI

JUDGE OF THE HIGH COURT OF KENYA, NAIROBI.