



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT CHUKA**

**MISC. SUCCESSION CAUSE NO.39 OF 2018**

**(FORMERLY CHUKA CM'S COURT SUCC. CAUSE NO. 149 OF 2008)**

**IN THE MATTER OF THE ESTATE OF EPHAPHRAS NJAGI JASON KARANJA (DECEASED)**

**NEWTON KAARIA NJAGI.....PROTESTOR.APPLICANT**

**VERSUS**

**JULIA IGOKI NJAGI.....ADMINISTRATRIX/RESPONDENT**

**R U L I N G**

1. This cause relates to the estate of the late **EPHAPHRAS NJAGI JASON KARANJA** (deceased herein) who died on 29<sup>th</sup> September, 2007 resident at Chogoria. The record of proceedings show that the widow, Julia Igoki Njagi was appointed the administratrix of the estate of the deceased herein on 11<sup>th</sup> May 2009 and on 3<sup>rd</sup> November, 2010 the said grant was confirmed and later rectified on 30<sup>th</sup> October, 2013. The listed assets comprising the estate were as follows:-

- i. Mwimbi/Chogoria/1217 (which was given to Newton Kaaria Njagi- the applicant herein).
- ii. Mwimbi/Chogoria/1620 (given to Gibson Kinyua Njagi)
- iii. Muthambi/Lower/Karimba/269 (given to the petitioner and administratrix).

2. Newton Kaaria Njagi, the applicant herein has now moved this court through Summons for Revocation of Grant dated 8<sup>th</sup> October, 2018 asking this court to revoke the grant on 25<sup>th</sup> September, 2013 on the following grounds namely:-

- a) That the administratrix left out vast deceased estate which she transferred to herself without following the procedure.*
- b) That the administratrix is guilty of non-disclosure of material facts pertaining the estate.*
- c) That the proceeding to obtain the grant were defective in substance.*
- d) That the grant was obtained fraudulently by making false statements to the court.*
- e) That the trial court lacked the requisite pecuniary jurisdiction to determine the cause.*

3. In his Supporting Affidavit sworn on 8<sup>th</sup> October, 2018, the applicant has deposed that the estate comprised other parcels of land known as Mwimbi/Chogoria/1649, 1650. 1652, 1654 and 1666 which he claims were ancestral lands jointly registered in the name of the deceased and his two brothers named Hiram Mutege and Jotham Njeru.

4. The applicant has further deposed that the above parcels were later transferred to the Petitioner/Respondent though they were not listed as the succession cause. The applicant faults the Respondent for not listing the properties stating that she was doing so in order to defraud other dependants.

5. The applicant has further deposed that after the transfer of the parcels to the Respondent, she disposed them and subdivided parcel No. Mwimbi/Chogoria/1666 where he claims he lives.

6. The applicant has also deposed that the deceased had given him parcel No. Mwimbi/Chogoria/1654 where he constructed a hotel and business premises. The applicant has claimed that the Respondent went ahead and subdivided the parcel into parcel No. Mwimbi/Chogoria/6646 and 6647 and transferred them to her name.

7. The applicant has faulted the Respondents for disposing parcel No. Mwimbi/Chogoria/1217 to one Rowland Kimathi to Kanga thus rendering the applicant landless.

8. In his written submissions through Kijaru, Njeru and Co Advocate, the applicant has asserted that the Respondent who is his mother left out land parcels No. Mwimbi/Chogoria/1666, 1659, 1650 and 1654 (whose mother title was Mwimbi/Chogoria/239) and which was held in common with Jason Karanja and Jotham Njeru).

9. The applicant has submitted that he has invoked the provisions of **Section 76 Law of Succession Act** stating that the cited provision can be invoked at any time. In his view the petitioner failed to include the cited parcels which belonged to the deceased when she ought to have done so in order for the assets to be distributed fairly to all the beneficiaries.

10. The applicant has also accused the Respondent for contravening **Section 55 (1) of Law of Succession Act** by distributing an asset of the estate to Roland Kimathi Kanga contrary to the certificate of rectification of grant.

11. On jurisdiction, the applicant has contended that the properties comprising the estate are worth more than 100,000/- which was the pecuniary jurisdiction of the trial court. He has cited that one of the properties comprising the estate is within Chogoria Township whose pecuniary value is Kshs.10,000,000 (ten million Kenya shillings).

12. The Respondent, has opposed this application. She has contended that she listed all the assets that were wholly owned by the deceased. She has however conceded that she later received parcels numbers Mwimbi/Chogoria/1666, 1659, 1650, 1652 and 1654 from her brother in law Hiram Mutegi who she accused of retaining a lion's share.

13. The Respondent has justified subdivision of parcel No. 1666 into 5988 to 5991 stating that she did so to ensure that everyone benefits. She has justified dealing with parcel No.1654 stating that she disposed it to Selmatech International as the administratrix.

14. In her submissions, the respondent states that her brother in law, Hiram Mutegi prevented her from including the assets jointly owned by deceased and deceased's brothers. She has accused, the applicant for not complaining throughout the succession process and only coming out after she has disposed off some of the properties.

15. This court has considered this application, the grounds upon which it has been made and the response. The main issues for determination are basically two:-

**(i) Whether the Petitioner/Respondent concealed material facts to court when petitioning for letters of administration.**

**(ii) Whether the lower court was seized with the jurisdiction to determine the cause.**

**(i) Whether the Petitioner/Respondent concealed material facts**

It is quite clear from the pleading and documents filed in the application that the listed assets comprising the estate excluded that property known as Mwimbi/Chogoria/239 which property appears to have been held in common by deceased and his two brothers Jotham Njeru Karanja and Hiram Mutegi Jason. The part that went to the Respondent on behalf of the deceased after sub-division are parcel No.1666, 1649, 1650, 1652 and 1654. The trial court rectified the grant on 30<sup>th</sup> October, 2013 when the above parcels had been transferred to the Respondent and this court finds that she concealed those material facts because the only asset disclosed as the subject of rectification having been left out initially was parcel Muthambi/Lower Karimba/269. The question posed is why did she not reveal to the trial court that the deceased owned at least part of Mwimbi/Chogoria/239 which had by then been sub-divided and translated to parcels No. Mwimbi/Chogoria/1649, 1650, 1652, 1654 and 1666?. The Respondent, as the appointed administratrix was legally and duty bound to disclose all the information regarding all the assets of the deceased to the trial court. I find the excuse given which is laying blame on her brother in law (Hiram Mutegi) to be pedestrian and legally unsound because one cannot contravene the law on the basis that he has been prompted to do so. Prompting or not prompting, the fact remains that what was done was illegal and unlawful. The Respondent concealed material facts to the trial court and should not have done so. The effect of non-disclosure is that she dealt with the assets comprising the estate without the authority from a court of law notwithstanding the fact that she was the appointed administratrix. The provisions of **Section 51(2) (h) of Law of Succession Act** requires a petitioner to make a full inventory of all assets belonging to the deceased and **Section 55 (1)** bars an administrator from distribution of any asset before confirmation is done. The Respondent purported to deal with part of the estate of the deceased without listing the same in the inventory of assets listed in the trial court and by so doing contravened the law. She concealed material facts which were material to the distribution of the estate.

16. On jurisdiction, though the applicant has not tendered any evidence to show that the assets comprising the estate are worth more than Kshs.100,000/- which was then the monetary limit to the jurisdiction of the Magistrate's Court as per **Section 48** of the then **Law of Succession Act** (which has since been amended), this court has noted from the petition filed that the petitioner did not disclose the value of the assets in Form P&A 5 and perhaps had she done so the trial court would have been put into the right picture on the question of jurisdiction. I am also persuaded to take judicial notice of the value of parcels of land within and around Chogoria Town and note that certainly the assets listed as comprising the estate was far much more than the monetary jurisdiction of the lower court. Therefore the extent that the petitioner did not reveal the value of the assets comprising the estate in Form P&A 5, I find that the proceedings leading to the grant were defective in substance. The Respondent also has not responded to the issue of lack of jurisdiction by the trial court. The applicant's contention therefore is uncontested. The value of the estate ought to have been stated before the trial assumed jurisdiction and this was not done.

In the premises, this court finds merit in this application and despite the fact that the applicant erroneously asked this court to revoke the grant issued on 25<sup>th</sup> September, 2013 (which is not the case, as there is no such a grant). This court finds that the grant issued on 11<sup>th</sup> May, 2009 was issued on account of concealment by the administratrix. That grant is hereby revoked and annulled. The subsequent subdivisions and transfers done on the basis of that grant are hereby suspended.

A fresh grant is hereby issued to Julia Igoki Njagi being the widow of the deceased. I grant her liberty to apply for confirmation of grant before expiry of 6 months in view of the age of this cause. I shall make no order as to costs.

**Dated, signed and delivered at Chuka this 15<sup>th</sup> day of May, 2019.**

**R.K. LIMO**

**JUDGE**

**15/5/2019**

Ruling signed, dated and delivered in the open court in presence of Kijaru for Applicant and Kirimi for Respondent.

**R.K. LIMO**

**JUDGE**

**15/5/2019**