



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT CHUKA

MISC. SUCCESSION CAUSE NO.25 OF 2018

(FORMERLY SPM CHUKA SUCCESSION CAUSE NO. 204 OF 2013)

IN THE MATTER OF THE ESTATE OF THE LATE

ANTONY GITONGA MUTEMBEI (DECEASED)

LUCY GATUMI MARETE.....APPLICANT

VERSUS

MARGARET MUKWARAMA M'KANGA.....PETITIONER

R U L I N G

1. This cause relates to the estate of the late **ANTONY GITONGA MUTEMBEI** (deceased) who died intestate on 20th June, 2013 at Chogoria Hospital resident at Kaare - Maara. The petition for letter of administration was done by Margaret Mukwarama M'Kanga, the mother to the deceased vide **Chuka Principal Magistrate's Court Succession Cause No.204 of 2013**. She was granted letters of administration and appointed administratrix on 9th December, 2013. The grant was later confirmed on 13th August 2014 and the petitioner/administratrix was granted all the assets comprising the estate which were listed as follows:

- a) Ntunene Adjudication Section 416
- b) Ntunene Adjudication Section 463
- c) Ntunene Adjudication Section 693
- d) Plot No.38A Kaare Market
- e) Plot No. 82B Kaare Market
- f) Co-operative Bank Account Nkubu Branch.

2. Lucy Gatumi Marete, the applicant herein has through Summons for Revocation of Grant dated 27th July 2018 asked this court to revoke the said grant on the grounds that the same was obtained through misrepresentation, concealment of material facts and the fact that the lower court which entertained the cause lacked pecuniary jurisdiction.

3. In her Supporting Affidavit sworn on 27th July, 2018, the applicant states that she is a widow to the deceased having been married to him in 2005 in accordance with Kitharaka customary marriage. She further depones that they were blessed with one issue namely Collins Murimi.

4. The applicant claims that she lived with the deceased with his parents and was only chased away when after the demise and burial of the deceased. She blames her mother in law, the Respondent herein, for squandering some of the assets of the deceased and has cited money withdrawn from the bank and a motorcycle which she claims was registered in the name of her son, who is still a minor. At the hearing of this summons the applicant reiterated what she deposed in her affidavit.

5. The applicant's allegation has been supported by Gerrald Uthenge, who has sworn an affidavit dated 24th January 2019 stating that he is an uncle to the deceased. He has confirmed that the applicant was married to the deceased in accordance with Kitharaka customs and that dowry was paid. He agrees with the applicant that she was chased away upon the demise of the deceased in this cause.

6. Grace Mungai Marete (PW2) testified at the hearing of this application and stated that the applicant was her daughter and confirmed that the deceased was her son in law having married her daughter. She also confirmed that the Respondent chased her daughter away when the deceased died.

7. The Respondent herein, Margaret Mukwarama M'Kanga, has opposed this application through a Replying Affidavit sworn on 14th September, 2018, where she has deposed that she is the mother to the deceased and conceded that the applicant was married to the applicant but that the two had separated by the time the deceased passed on. She denies having chased away the applicant and claims that the applicant has remarried one Elijah Mutegi Kiriimi.

8. The Respondent also concedes that Collins Murimi Gitonga the applicant's child is her grandson and should get a share of the estate of the deceased and expressed willingness to give him a share. She however insists that the applicant does not deserve a share of the estate, as in her view, she did not contribute anything towards acquisition of the assets comprising the estate. She has further claimed that she bought a motor cycle and registered it in the name of Collins Murimi Gitonga, her grandson to fulfill the wishes of the deceased who was his father.

9. The Respondent testified in this court that she is willing and ready to surrender plot No.33 to her grandson Collins Murimi but insisted that the rest of the estate should remain with her as she is the one who had given the deceased the assets comprising the estate.

10. This court has considered the matter and in particular the concession made by the Respondent. She concedes that the applicant was once married to the deceased and that the deceased had a child both of whom are considered as dependants in law. The provisions of **Section 3 (1)** of the **Law of Succession Act** clearly state that "*wife*" includes a wife who is separated and it matters not therefore whether or not the applicant had separated with her husband so long as she is not remarried. The evidence tendered does not show that the applicant has been remarried. In addition to the above provision, **Section 29 (a) Law of Succession Act** clearly stipulates that wife, wives, or former wife or wives and the children of deceased whether or not maintained by deceased immediately prior to his death, are dependants. The applicant and her child are therefore dependants as per that section of the law.

11. The Respondent clearly concealed the material facts regarding the status of the applicant and the deceased's child (Collins Murimi). Her attempt to recognize the child as the dependant is in my view belated at best. What is apparently obvious is that the Summons for Revocation of Grant dated 27th July, 2018 is merited going by the concession by the Respondent. On that ground alone, the court finds basis to invoke **Section 76 of Law of Succession Act** which I hereby do to revoke the grant issued on 9th December, 2013 and confirmed on 13th August 2014. I also reverse all the transactions reflected pursuant to that grant. The properties comprising the estate shall revert back to the name of the deceased pending determination of the main cause which I direct to be transferred to this court for determination. I also exercise my discretion under **Section 66 of Law of Succession Act** by appointing both the applicant and the Respondent as joint administratrixes to the estate of the deceased herein and grant them liberty to move this court for confirmation of the grant issued hereby before the expiry of the statutory period in view of the age of the cause. I shall make no order as to costs at this stage.

Dated, signed and delivered at Chuka this 13th day of May, 2019.

R.K. LIMO

JUDGE

13/5/2019

Ruling dated, signed and delivered in the open court in presence of parties and in presence of Kaaria holding brief for Kijaru for the applicant.

R. K. LIMO

JUDGE

13/5/2019