



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO.2807 of 2003

SUCCESSION CAUSE 2323/1998

IN THE MATTER OF THE ESTATE OF JANE WAIHIRA NJERU(DECEASED)

RULING

The deceased **Jane Waithira Njeru** died intestate on 22nd May 1997. Peter Maina Ndung'u vide **Succession cause no. 2323 of 1998** petitioned for grant of letters of administration and the same were granted to him on 28th December 1998 and confirmed on 6th October 2000. Prior to which the Respondent had via **Succession Cause no. 51 of 1998 in Chief Magistrate's court at Thika** had petitioned and been granted letters of administration of the deceased's estate. On 26th May 2004 parties recorded a consent to consolidate all related Court Files before Justice Dulu which saw **Succession Cause no. 2323/1998 and Succession Cause no. 327/2001 with Succession Cause No. 2807/2003 with 2807/2003** being the operational file. Further, on 28th March 2006 application for revocation in **Succession Cause 327 of 2001** was withdrawn.

Leaving application for consideration is the summons for revocation date 19th May 2018.

The Applicant Jane Warigia Macharia is the widow to the late Peter Maina Ndungu filed their application for revocation of grant. She avers that her late husband Peter Maina Ndungu who passed on 24th May 2012 had filed a Succession Cause with regard to the deceased's estate and had obtained grant of letters of administration in **Succession Cause No. 2323 of 1998**. He had been granted the same in 6th September 2000. This he did unknowingly that the Respondents had filed another **Succession Cause No. 51 of 1998** in Thika Law Courts. That Peter Maina Ndungu was entitled to **Loc.1/Mugumoini/1247** following the demise of the deceased Jane Waithira Njeru but he was maliciously manipulated and disinherited by the unlawful activities of the Respondents.

Letters of administration obtained by the Respondents were unlawfully used to subdivide the said parcels of land and issue title deeds namely **Loc.1/Mugumoini/1405, 1406 and 1407** and no legal subdivision took place it only on paper and not on the ground.

In her affidavit in support of the said application, the applicant avers that the Respondent deceived the court that they were the deceased's next of kin and applied for letters of grant of administration intestate in **Succession Cause no. 51 of 1998 at Chief Magistrate's Court at Thika**. At the time Peter Maina Ndungu rushed to the High Court and filed **Succession Cause no. 2323 of 1998** and was granted with grant of letters of administration on 6th September 2000. He subsequently filed revocation of grant of letters of administration in **Succession Cause No. 2323 of 1998** instead of **Succession Cause No. 51 of 1998**. Unfortunately, Peter Maina Ndungu died before revocation of the grant issued in **Succession cause no. 51 of 1991**.

The Applicant herein filed for substitution which was approved and amended on 23rd January 2017 which in essence made her sole administrator of the deceased's estate. This grant was subsequently confirmed before Justice Musyoka. **Loc. 1/Mugumoini/1247** is the sole asset. Those surviving the deceased were deprived by the respondents who had illegally subdivided into **1405, 1406 and 1407** and title deeds issued. However, on confirmation the said 3 parcels of land **1405, 1406 and 1407** were to transfer to **Jane Warigia Macharia**.

On the strength of the said title deed they obtained eviction order and sought to evict them but they managed to go back on the intervention of the community and have been on the said parcel of land since then. She avers that the Respondents ignored the fact that the deceased had a son who was his sole beneficiary. She urged the court to have the grant of letters of administration granted to Peter Kamande Gicha and Simon Mwangi Wainaina on 7th July, 2000 revoked.

A perusal of **Succession Cause no. 51 of 1998** reveals that Peter Kamande Gichia and Simon Mwangi Wainaina had sought to take out letters of administration of the deceased's estate on grounds of being purchasers. Parties vide their application dated 16th February 1998 cited Phylis Wambui Mbugua who is alleged to be the sister to the deceased to either accept or refuse letters of administration intestate. Upon failing to do so the court issued the grant of letters of administration to **Peter Kamande Gichia and Simon Mwangi Wainaina** on 22nd February 1999.

DETERMINATION

I have considered the parties pleadings. The applicant seeks to annul and revoke the grant of letters of administration intestate issued to Peter Kamande Gichia and Simon Mwangi Wainaina on 22nd February 1999. **Section 76** provides that;

“A grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by any interested party or of its own motion—

“A grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by any interested party or of its own motion-

(a) That the proceedings to obtain the grant were defective in substance;

(b) That the grant was obtained fraudulently by the making of a false statement or by the concealment from the court of something material to the case;

(c) That the grant was obtained by means of an untrue allegation of a fact essential in point of law to just the grant notwithstanding that the allegation was made in ignorance or inadvertently ...”

Peter Maina Ndungu is the sole son of the deceased hence her only beneficiary. Peter Kamande Gichia and Simon Mwangi Wainaina claim to have cited Phylis Wambui Mbugua who is alleged to be the sister to the deceased instead of Peter Maina Ndungu who ranks in priority as provided for under **Section 66 of the Law of succession Act** which provides;

“when a deceased has died intestate, the court shall, save as otherwise expressly provided, have a final discretion as to the person or persons to whom a grant of letters of administration shall, in the best interests of all concerned, be made, but shall, without prejudice to that discretion, accept as a general guide the following order of preference—

(a) surviving spouse or spouses, with or without association of other beneficiaries;

(b) other beneficiaries entitled on intestacy, with priority according to their respective beneficial interests as provided by Part V;”

In line with **Section 66** the deceased's son Peter Maina Ndungu was the rightful person to petition for grant of letters of administration of the deceased's estate. Phylis Wambui Mbugua the alleged deceased's sister most probably knew Peter Maina Ndungu the deceased's son and should have advised the said parties to cite the proper party. By failing to do so I find they concealed facts material to the case and as such the said grant so issued to Peter Kamande Gichia and Simon Mwangi on 22nd February 1999 is hereby revoked. Cost in the cause. It is so ordered.

DATED, SIGNED AND DELIVERED THIS 3rd DAY OF JUNE 2019

M. W. MUIGAI

JUDGE

IN THE PRESENCE OF:

N/A FOR THE PETITIONER

N/A FOR THE OBJECTORS

JASMINE - COURT CLERK