



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

SUCCESSION CAUSE NO. 35 OF 2007

IN THE MATTER OF THE ESTATE OF THE LATE JOHN PETER MUREITHI (DECEASED)

JANE NYAWIRA GICHUHI also known as

JANE NYAWIRA MUREITHI.....APPLICANT

VERSUS

HELLEN NJERI MUREITHI.....RESPONDENT

RULING

1. The estate relates to the late **John Peter Mureithi (DECEASED)** who died on the 25th August, 2006;
2. A Grant of Letters of Administration was issued to one Hellen Njeri Mureithi (**'Hellen'**) on the 10/04/2007 and the same was confirmed on the 9/11/2007;
3. The applicant (**'Jane'**) filed the application on the 10/03/2014 under the provisions of Rule 44 of the Probate and Administration Rules and she sought the following orders;
 - (i) The proceedings to obtain Letters of Administration were defective in that the applicant being a daughter and survivor of the deceased and therefore a beneficiary of the deceased's estate neither consented to the respondent/petitioners application for Letters of Administration nor was she served with a citation to accept or refuse Letters of Administration;
 - (ii) The Letters of Administration were obtained by concealment of a material fact that the applicant is a survivor and beneficiary of the Estate of the deceased.
4. The application was premised on the grounds on the face of the application and to support her claim the applicant also relied on her supporting affidavit made on the 10/03/2014; the respondent (**'Hellen'**) filed her response to the application on the 15/10/2014; subsequent to the instant application the applicant had also filed an application on the 28/06/2017 under certificate of urgency seeking injunctive orders from this Honorable Court to restrain the respondent from transferring or alienating the properties specified in the Certificate of Confirmation pending the hearing and determination of this instant application;
5. Directions were taken on the 23/02/2018 that the application be heard by way of **'viva voce'** evidence; hereunder is a summary of the respective parties claims and responses;

APPLICANT'S CASE

6. Jane's evidence was that the deceased was her father and the respondent was her step-mother; her mother was the first wife of the deceased and the two had separated and were also divorced but she could not recall when they had divorced; her mother passed on in 1992 and as her father had custody she was brought up by her father and her step-mother;
7. The respondent filed for letters of Administration and she got to know about this in 2009; upon perusal of the Letter from the Chief the applicant noted that her name and that of a step-sister by the name Caroline were not listed therein as being children of the deceased;
8. The applicant stated that she was not served with any citation; the Consent was signed by the other children and it was only herself and her step-sister Caroline whose consent had not been sought or obtained;
9. That all the properties comprising the estate of the deceased were distributed to the respondent and nothing was given to her nor her

children; she was never consulted on the distribution and her preferred mode of distribution would have been that the properties be divided between the two houses; her contention was also that there were un-administrated properties of the deceased's estate that needed to be distributed;

10. She confirmed that for seven (7) years she had made attempts to resolve the issue; that on the 4/06/2015 her advocates had written to the respondent's advocate and proposed an amicable settlement provided the Certificate of Confirmation was rectified; that she waited for communication but as none was forthcoming so she proceeded with the application to revoke the Grant;

11. The applicant reiterated that there had been a procedural defect in obtaining the Grant as the respondent had failed to disclose all the names of the children as required in law; that the cumulative effect of such failure was that of disinheriting the applicant; that rectification of the Grant would not suffice and therefore prayed that the Grant be revoked;

RESPONDENTS CASE

12. The respondent stated that she wished to rely on her Replying Affidavit; she confirmed that the deceased was her husband and they had gotten married in 1972; the deceased had another previous wife named Naomi Wambui that by the time she featured the two had separated and were later divorced; the deceased and Naomi had two children a daughter and a son; the applicant is the daughter whereas the son Joseph Wambugu Mureithi is deceased;

13. Hellen stated that the applicant was seven (7) years old when she got married to the deceased; that Jane lived with them until the time she got married and it was the respondent who gave her away as her mother;

14. Upon the demise of the deceased she petitioned for Letters of Administration; she said she had six (6) children but the letter she obtained from the Chief only listed four (4) and the ones named were Nicholas, Henry Christine and Thomas; she claimed that it was the Chief who left out the names of her daughter Caroline and Jane her step-daughter; she stated that she did not know the reason why the Chief did this as he knew these two (2) daughters;

15. The other four children signed the consents and she proceeded without involving Jane and Caroline; and there being no objection raised the Grant was issued to her which she later confirmed; though she received a letter dated 4/06/2015 and the respondent was willing to sit with all the children to discuss the distribution of the estate; that she did not respond to it because she wanted the meeting to be jointly and inclusive of her children so as to get all ; child has been discriminated as the entire estate was transmitted to the respondent to hold in trust for the beneficiaries inclusive of Jane; that she was keeping the land on the children's behalf even though the Grant reads "**absolutely**" the applicants interest and the other beneficiaries could be catered for;

16. The respondent prayed that the application be dismissed.

ISSUES FOR DETERMINATION

17. After the full hearing the parties were directed to file and exchange written submissions; upon perusing the court record and reading the respective written submissions this court has framed the following issues for determination;

- (i) Whether to revoke the Grant or the Confirmed Grant;
- (ii) Who ranks in priority to petition for Letters of Administration

ANALYSIS

Whether to revoke the Grant of the Confirmed Grant;

18. The instant application is premised under Rule 44 of the Probate and Administration Rules which incorporates the substantive law found in the provisions of Section 76 of the Law of Succession Act; the two provisions of law give this court the power to revoke a grant whether confirmed or not; and Section 76 reads as follows;

"76. Revocation or annulment of grant

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 justify the grant notwithstanding that the allegation was made in ignorance or inadvertently;

(d) that the person to whom the grant was made has failed, after due notice and without reasonable cause either—

(i) to apply for confirmation of the grant within one year from the date thereof, or such longer period as the court order or allow; or

(ii) to proceed diligently with the administration of the estate; or (iii) to produce to the court, within the time prescribed, any such inventory or account of administration as is required by the provisions of paragraphs (e) and (g) of section 83 or has produced any such inventory or account which is false in any material particular; or

(e) that the grant has become useless and inoperative through subsequent circumstances.”

19. It is not disputed that the applicant and one Caroline are the children of the deceased; this court had the occasion to peruse the Chiefs letter dated 26/12/2006 and the letter lists only four (4) children as having survived the deceased; those named are as listed hereunder;

(i) Nicholas Joseph Wambugu – son

(ii) Henry Albert Waweru Mureithi – son

(iii) Christine Angela Nyawira Mureithi - daughter

(iv) Thomas Roy Ndiuini Mureithi - son

20. Armed with this letter the respondent proceeded to petition for Letters of Administration and the above names are the only children cited as having survived the deceased and their consents were duly obtained; in her evidence the respondent stated that she relied totally on the Chiefs letter when she filed the petition; she further contended that the applicant was at all times aware of the succession cause right from the date of the filing which was in 2007; and that the assumptions that they the two daughters were left out because of the fact that they were married was erroneous; and that she never had any intention of disinheriting the two;

21. From her averments and testimony the respondent has indeed conceded that she was aware that the daughters were family members whom she knew had a beneficial interest in the deceased's estate; and despite these material facts being within her knowledge she simply proceeded to apply for the letters of administration and did not disclose to the court nor list them as beneficiaries therein;

22. The record indeed demonstrates that the respondent failed to list them in the petition; the record also shows that no Citation was issued to these beneficiaries, inclusive of the applicant, as required by the provisions set out under Rule 26(1) of the Probate and Administration Rules;

23. Having listened to the evidence of the two parties and having observed their demeanour at the hearing hereof this court noted that there was indeed no love lost between the two and is further inclined to disbelieve the assertion that the two daughters were not left out due to their marital status; and finds that this is the only plausible reason for their being left out of the proceedings;

24. Despite the absence of friendship between the applicant and the respondent there is no reason given by the respondent for failing to commence the succession proceedings by taking out a Citation and no evidence was tendered on whether seeking consent had proved to be a challenge;

25. Rule 26(1) of the Probate and Administration Rules provides as follows;

26. It is trite law that the respondent knowing that the applicants had an interest either as survivors, dependants or beneficiaries she ought to have notified or involved the applicant at all stages and obtained her written consent and/or in default the respondent ought to have cited Jane;

27. There is absolutely no evidence on record that demonstrates that the respondent duly notified the applicant before filing the petition; neither is there any evidence that the respondent sought and failed to obtain the applicant's consent; and it goes without stating the obvious that the respondent did not comply with the provisions of Rule 26 aforesaid and that the Grant was obtained by concealment from the court of material and pertinent facts relating to the applicant;

28. This court is satisfied that the applicant has demonstrated that the application satisfies the requirements as set out in Section 76 (a) and (b) of the Law of Succession Act in that the Grant was obtained in a manner that renders it defective;

Who ranks in priority to petition for Letters of Administration:

29. Having earlier revoked the Grant issued on the 10/04/2007 the next issue that needs to be addressed is to whom to issue a fresh grant to;

30. The applicable law that gives priority or preference to the person to petition for Letters of Administration is found at Section 66(a) and (b) of the Law of Succession Act which provides as follows;

31. Hellen in her testimony stated that the deceased was her husband and they had gotten married in 1972; that the deceased had another previous wife named Naomi Wambui and that by the time Hellen came onto the scene the two had long since separated and were eventually divorced; that this other former spouse passed on in 1992;

32. Hellen further confirmed that Jane was her step daughter and that she and the deceased had brought her up; that Jane had stayed with her

until she had gotten married and at the wedding she had given her away as her mother;

33. All this evidence was not disputed or controverted by the applicant; which then makes Hellen the sole surviving widow of the deceased; this court recognizes that the applicant is a daughter to the deceased but this does not rank her at the same level as the widow of the deceased; and therefore a fresh Grant shall issue to the respondent as a court appointed administrator to the estate of the deceased;

34. It follows that the Confirmed Grant dated 9/11/2007 also stands revoked and the respondent is directed to file a fresh summons for confirmation of the Grant within 30 days from the date hereof.

FINDINGS & DETERMINATION

35. In the light of the forgoing this court makes the following findings and determinations;

(i) The Application dated 10/03/2014 made by Jane Nyawira Gichuhi is found to be partially meritorious;

(ii) The Grant dated 9/11/2007 is hereby revoked; a fresh Grant to issue in the name of Hellen Njeri Mureithi;

(iii) The Confirmed Grant dated the 9/11/2007 is hereby revoked; the respondent is directed to file a fresh summons general for the confirmation of the Grant within the next thirty (30) days from the date hereof;

(iv) The parties are at liberty to apply for further directions;

36. This being a family matter each party shall bear their own costs;

It is so ordered accordingly.

Dated, Signed and Delivered at Nyeri this 13th day of June, 2019.

HON. A. MSHILA

JUDGE