



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
FAMILY DIVISION
SUCCESSION CAUSE NO. 776 OF 2014
IN THE MATTER OF THE ESTATE OF ESTHER WANGUI KAIGUA (DECEASED)

AMINA WANJIRU KAIGUA.....APPLICANT

VERSUS

SAMUEL MUNENGE KAIGUA.....RESPONDENT

JUDGMENT

1. The deceased Esther Wangui Kaigua was the second wife of the late Kaigua Munenge Murira alias George Kaigua Munenge who died in 1994. She died intestate on 14th January 2013. She did not bear any child. She had got married to the late Kaigua in 1949. By the time of the marriage, the late Kaigua's first wife had long died, but had got the following children with him:-

- a) Sofia Wahu Swale;
- b) Peter Karitu Kaigua (now deceased);
- c) Tabitha Wanjiku Kaigua'
- d) Amina Wanjiku Kaigua (the applicant); and
- e) Samuel Munenge Kaigua.

These children were brought up by the deceased Esther Wangui Kaigua.

2. When the deceased died, she left the following property which was registered in her name:-

- a) Ruiru Mugutha Block 1/T.2658;
- b) Komothai/Thuita/54;
- c) Juja/Kiaura Block 3/1457;
- d) Ruiru/Ruiru East Block 2/1460; and
- e) Juja/Kiaura Block 3/1458.

3. It was the case of the respondent Samuel Munenge Kaigua that he was adopted by the deceased and the late Kaigua in 1992.

4. Following the deceased's death on 14th January 2013, the respondent petitioned the court on 1st April 2014 subsequent to which he obtained a grant of letters of administration intestate. The grant was confirmed and a certificate issued on 8th June 2015.

5. On 23rd April 2015 the applicant filed the present summons to have the grant and certificate revoked on the basis that the respondent had not disclosed to the court that the estate had other dependants; that the respondent had misled the court into believing that he was the only beneficiary to the estate of the deceased. The application further sought to have the respondent restrained from transferring, or in any other way dealing with, the properties of the estate. On 24th November 2015 the court asked that the estate of the deceased be preserved pending the hearing and determination of the application for revocation.

6. The application was opposed through the respective replying affidavits filed by the respondent, Margaret Wanjiru Ngacha and Josephat Munyao Karanja. The deceased was sister to the mother of Margaret. Margaret stated that the deceased raised her. Josephat is Margaret's brother. Their response was that before the late Kaigua died he had shared his property to each of the two houses; that the property in dispute was what he gave to the house of the deceased, and which the deceased said would go to the respondent who was left as her heir. It was the respondent's further case that some of the property in the deceased's name had been bought separately by her.

7. The deceased hailed from Komothai Location in Githunguri in Kiambu County. However, when the respondent sought to petition for the grant of letters of administration he sought an introductory letter from the chief of Kamburu Location of Lari in Kiambu County. It was the respondent's case that he went to the chief of Kamburu because the chief of Komothai had refused to give him the letter; that the chief of Komothai was working with the first house to deny him his claim to the estate. In any case, he went on, the deceased also had some of the property situated in Kamburu location.

8. The applicant was represented by Mr Gachie and the respondent by Mrs Waiganjo. Each filed written submissions which I have considered alongside the evidence as indicated in the foregoing.

9. It is evident that the applicant and her siblings were the children of the late Kaigua who were raised by the deceased from the time she got married to him in 1949, following the death of their mother. For all purposes, these were the deceased's children. When the respondent came into the family in 1992, he found them. They became his brothers and sisters.

10. The respondent went to the chief of Komothai seeking a letter to introduce him to the court to petition for the grant. He found resistance. The chief could not introduce him alone as the other children of the late Kaigua were also laying claim to the estate. He alone, went to the chief of Kamburu for the letter. This is how he managed to sidestep, as it were, the rest of the family of the late Kaigua.

11. Under **section 51(2)(g)** of the **Law of Succession Act (Cap 160)** and rule 7(1) of the **Probate and Administration Rules**, when the respondent filed the petition seeking grant of letters of administration intestate he was obliged to provide the names and addresses of the applicant and her siblings, as they were his brothers and sisters (**In the matter of the Estate of Elizabeth Wanjiku Munge (Deceased) [2015] eKLR**). Under **rule 26** of the **Rules**, now that the applicant and her siblings had not renounced their claim to the estate, the respondent was obliged to seek their consent before applying for the grant. He was obliged to give them notice that he was applying for the grant, now that he had not obtained their consent (**Tabitha Kalekye Kimeu & Another –v- Cecilia Mwelu Nduva [2017]eKLR**).

12. Further, under **rule 40(3)** of the **Rules**, the respondent was, when seeking to confirm the grant, obliged to swear an affidavit in which he was supposed to include the names and addresses of the applicant and her siblings and to indicate whether or not he was providing for them. They were entitled in the same degree to seek the grant. This was not done.

13. In short, the respondent knew he had brothers and sisters but did not disclose them, first, at the point of applying for the grant of letters of administration intestate and, second, at the point he was confirming the grant. He knew they were laying a claim to the estate, and that was why he sought introduction from a chief away from where the deceased hailed. In doing this, he made sure they were not going to know that he was going to court to petition. The result was that the respondent was guilty of not only material nondisclosure but also of fraud. Under **section 76(b)** of the **Act** the application for revocation succeeds.

14. Following the confirmation of the grant, the respondent sold some of the properties of the estate. They were Ruiru/Mugutha Block 1/T.2658, Komothai/Thuita/T.55 and Juja/Kiaura Block 3/1458. In the application, the applicant sought that the respondent does render accounts of the sale and do deposit the proceeds of the same into court. I allow the application and order that the respondent does render the accurate account of the proceeds of the same within 30 days from today.

15. In respect of Ruiru/Ruiru East Block 2/1460, Komothai/Thuita/54, Juja/Kiaura Block 3/1457, Komothai/Thuita/T.105 which are in the name of the respondent, I issue an order restraining the sale, transfer or any other alienation until it is further ordered by the court.

16. In those terms, the grant issued to the respondent on 16th September 2014 and the certificate of confirmation issued to him on 8th June 2015 are hereby revoked.

17. So that this matter does not remain in limbo, I order a fresh grant of letters of administration intestate to be issued in the joint names of Samuel Munenge Kaigua (the respondent) and Amina Wanjiku Kaigua (the applicant). They, or any of them, shall be at liberty to apply for the confirmation of the grant within 60 days.

DATED and SIGNED at NAIROBI this 12TH day of JULY 2018

A.O. MUCHELULE

JUDGE

DATED and DELIVERED at NAIROBI this 16TH day of JULY 2018

J. N. ONYIEGO

JUDGE