



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT EMBU

SUCCESSION CAUSES NO. 11 OF 2016

IN THE MATTER OF THE ESTATE OF GITI MWANGANGE (DECEASED)

LYDIA WANGUI MUKUTHU.....APPLICANT

V E R S U S

JEREVASIO CRISPIN KINYUA.....PETITIONER/RESPONDENT

J U D G M E N T

1. This cause was filed in court on 13/01/2016 by the petitioner/respondent herein Jerevasio Crispin Kinyua petitioning for letters of administration intestate in the estate of Giti Mwangange the deceased herein.
2. The petitioner/respondent named ten (10) beneficiaries as surviving the deceased herein described as two widows, two sons and six (6) daughters. The letters of administration intestate were issued to the petitioner on 23/06/2016. The grant was confirmed on 25/01/2017 with the ten beneficiaries name in this case getting different shares.
3. The applicant filed summons for revocation of grant dated 20/07/2017. The application was opposed by the respondent/petitioner. The summons was heard by way of *viva voce* evidence. The grant was stayed pending hearing and determination of these summons.
4. The applicant set out the following grounds on the face of her application and in the supporting affidavit:-
 - (i) That the grant was defective in substance and form;
 - (ii) That the grant disinherits some of the beneficiaries;
 - (iii) That the interests of some of the beneficiaries in the estate were not taken into consideration.
5. The evidence of the applicant was that the deceased sold her a plot out of his land L.R. Nthawa/Riandu/2779 of which she took possession but was to be evicted by the respondent after the death of the deceased. That this case was filed without the applicant being informed despite her interests in the estate.
6. It was further stated that the applicant's interests were not factored in the grant. It was the applicant's evidence that she entered into a sale agreement with the deceased to sell her a plot out of his land Nthawa/Riandu/2779 and paid Kshs.20,000/= at the execution of the agreement. Thereafter, she continued paying the balance of purchase price by way of school fees for deceased's daughter and paid quite some substantial amount. She produced school fees receipts for B W G of [particulars withheld], Rukuriri.
7. The applicant said she was a teacher at St Mary Goretti Girls before she was transferred to Masinga Girls Secondary School. She further stated that while at Masinga, the applicant continued to pay school fees for the daughter of deceased.
8. The deceased obtained the consent for sub-division of the land so as to give her her plot. After the death of deceased, the applicant approached the family of the deceased to give her the portion of land she was purchasing from the deceased but she got no cooperation from them.
9. The petitioner/respondent later filed this case without informing the applicant and proceeded to distribute the estate. He failed to give due consideration to the interests of the applicant in the distribution of the estate.

10. The petitioner/respondent denied that the claim of the applicant that she had an interest in the estate of the deceased. He said that he is not aware that his father ever sold any land to the applicant. DW1 further denied having witnessed any payment for consideration from the applicant.

11. The applicant came to claim land after filing these summons for revocation. The petitioner/respondent reported the matter to the chief of the area who warned the applicant to keep off.

12. The petitioner/respondent called one witness DW2 who testified that she is the 1st widow of the deceased and had no knowledge of any land sale transaction between her late husband and the applicant. She said that she never took possession of any portion of the deceased's land. DW2 denied knowing the applicant before these summons for revocation came up.

13. The issue for determination is whether the applicant has established a case for revocation of grant against the defendant.

14. The applicant said she was not informed of the filing of this case and that her interest was not taken into consideration. There is no dispute that she is not a blood relative of the deceased. The petitioner/respondent is the son of the deceased by his first wife. He obtained the letters of administration with the consent of the two widows of the deceased and had now obtained confirmation of grant and geared towards the distribution of the estate. However, orders for stay of the grant were issued pending determination of these summons.

15. The law of succession sets the order of priorities in a succession cause in Section 39(1) as follows:-

(1) Where an intestate has left no surviving spouse or children, the net intestate estate shall devolve upon the kindred of the intestate in the following order of priority-

(a) father; or if dead

(b) mother; or if dead

(c) brothers and sisters, and any child or children of deceased brothers and sisters, in equal shares; or if none

(d) half-brothers and half-sisters and any child or children of deceased half-brothers and half-sisters, in equal shares; or if none

(e) the relatives who are in the nearest degree of consanguinity up to and including the sixth degree, in equal shares.

18. The applicant is not among the list of priority and she is not a beneficiary to the estate. For this reason, she had no capacity to apply for letters of administration intestate. The widows and the children have survived the deceased and are possessed of the legal capacity to file and proceed with the processes in this succession cause. The defendant having obtained consent of the widows and the children was properly appointed the administrator.

17. The applicant annexed a letter from the chief of the area dated 30/10/2017 addressed to "*whom it may concern*". It states in part "*the bearer of this letter Ms. Lydia Wangui Mukuthu Id. No. 5906686 was in this office and alleged that they had entered into a sale agreement with Giti (deceased) for purchase of a portion of the said land (L.R. Nthawa/Riandu/2779) prior to his demise*".

18. The letter is clear that no sale agreement or any other document was presented to the area chief.

19. The 2nd letter is addressed to the chairman of Siakago Land Control Board dated 22/07/1996 by the District Agricultural Officer Siakago. It states that the DAO has no objection to sub-division of land L.R. Nthawa/Riandu/2779 into two parcels. This is by no means a "letter of consent" and does not mention the name of the applicant or that of the deceased.

20. The application for consent dated 15/07/1996 is required to be signed by the proposed purchaser and vendor. It bears only one signature of the "vendor" whose name is not given in the document.

21. The purchaser did not sign the application. It is a requirement of the law that the application for consent bears the signature of the purchaser and vendor. This one is not a valid application for consent for sub-division. I reach a conclusion that there was no consent to sub-divide the land in question let alone a valid application to do so.

22. The annexed so called minutes of the Siakago Land Board have no heading or reference from the Land Control Board. It consists of seven entries and bears the stamp of Assistant County Commissioner, Siakago and do not bear any signature. There are no minutes of any meeting save for several entries for 30/07/1996.

23. Entry No. 425 bears the name of the deceased Giti Mwangange described as:-

Sub-division of 2.73 ha. Into two portions of 1.21 ha. and 1.52 ha. This entry does not bear any parcel number.

24. The handwritten purported agreement produced by the applicant was only signed by one party and does not specify the size of the portion the applicant was buying. It has no character or particular of a land sale agreement.

25. The school fees receipts produced do not add any value to the applicant's case. She produced no land sale agreement that authorized her to pay school fees for deceased's daughter from the agreed purchase price if any. The applicant's name does not feature in the receipts.

26. I reach a conclusion that the plaintiff has not produced any valid sale agreement between her and the deceased or any other tangible evidence to prove that the deceased sold her land during his life time.

27. This application is brought under Section 76 of the Succession Act. It provides for the following grounds that an application must prove:-

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 has ordered or allowed; 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 provision 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.

28. The applicant was not a relative of the deceased and does not rank in priority under Section 39 of the Act. Neither was the applicant a beneficiary of the estate of the deceased. The defendant had no legal obligation to notify her of the filing of the succession cause.

29. The applicant has failed to satisfy any of the grounds provided for under Section 76 of the Act. Her application is bound to fail for that reason.

30. I find these summons lacking merit and I dismiss it accordingly.

31. Each party to meet their own costs.

32. It is hereby so ordered.

DELIVERED, DATED AND SIGNED AT EMBU THIS 5TH DAY OF JULY, 2018.

F. MUCHEMI

J U D G E

In the presence of:-

Mr. Okwaro for Mr. Andande for Applicant

Petitioner/Respondent