



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT EMBU

SUCCESSION CAUSES NO. 44 OF 2001

In the matter of the Estate of JOHN IRERI KANAKE (Deceased)

MARY MUTHONI NJERU.....APPLICANT

V E R S U S

PATRICK GICOVI NJERU.....PETITIONER/1ST RESPONDENT

SUSAN WANGIRI IRERI.....2ND RESPONDENT

TERESIA WAMBOGO.....3RD RESPONDENT

R U L I N G

1. This is a summons for revocation/annulment of grant issued in favour of Patrick Gichovi Njeru and confirmed on 2/02/2006.
2. The grounds supporting the application was that the grant was obtained fraudulently by making a false statement; that the applicant was never involved of the proceedings; and that the petitioner proceeded to disinherit the applicant.
3. The summons were heard by way of *viva voce* evidence of the applicant and the 1st respondent.
4. The case of the applicant was that she is a daughter of the deceased while the 1st respondent is deceased's son. The 2nd respondent is the mother of the applicant and the 1st respondent.
5. The applicant testified that the 1st respondent did not inform her of these succession proceedings. He filed the case and proceeded to distribute the estate of the deceased without providing for her. The 1st respondent ended up with most of the estate's assets and denied the other beneficiaries of their rights.
6. The applicant told the court that her mother the 2nd respondent was the 1st wife of the deceased while one Wanja Mugo the mother of one Job Muriithi was the 2nd wife.
7. The estate was distributed as follows according to the applicant:-
 - i. *L.R. Gaturi/Nembure/449 measuring 5 acres was shared equally between the 1st respondent and Job Muriithi.*
 - ii. *Gaturi/Matakari/T.298 was given to one Teresa Wambogo. The applicant alleges that Teresa is not a beneficiary but a stranger.*
 - iii. *L.R. Nairobi Block/12062/298 a residential house of two bedrooms was given to the house of the applicant's mother but the 1st respondent sold it and squandered the proceeds. He only gave her a small part of the said proceeds being Kshs.1,400,000/=.*
 - iv. *Machakos Plot Block 11/244 was given to the 2nd house.*
 - v. *An Isuzu lorry was sold by the 1st respondent.*
8. The applicant's proposal was that the land where the family home sits Gaturi/Nembure/449 be sub-divided and shared equally by all the family members. She said that the input of all the family members on the distribution was important but the 1st respondent did not consult any one.

9. The applicant said she learnt of the existence of the succession cause much later. She then attended court on 12/05/2015 and objected to the mode of distribution.

10. The 1st respondent opposed the application. In his testimony and replying affidavit, he said that the applicant is his real sister and that the 2nd respondent is his mother. He also alluded to the fact that the deceased had two wives and each of them had children.

11. The 2nd respondent is his mother while Wanja Ireri is the mother to Job Muriithi, a beneficiary.

12. It was his evidence that when he filed the succession proceedings, he informed all the family members of the deceased including the applicant. He said that his mother raised an objection against him being appointed the administrator which objection was dismissed.

13. At that time, the applicant was working together with the 1st respondent in the objection proceedings. She has now filed this summons for revocation in furtherance of the fight for her interests and those of her mother.

14. He further testified that the land Gatari/Nembure/449 was divided into two equal houses. He holds the half share in trust for the first house while Job Muriithi holds the other half share in trust for the 2nd family.

15. The 1st house was given Nairobi residential plot Block 12062/298 which originally had two bedrooms. The 1st respondent said he had expanded the house by adding two units to the original structure. He approached his sister the applicant and they agreed to sell the house and share the proceeds.

16. As for plot No. Gatari/Matakari/T.298, the plot belonged to the deceased and his three siblings. The family agreed during the lifetime of the deceased that the deceased be registered the owner of the plot to hold in trust for the family. The deceased and his two sisters died. The plot was included in this cause and was given to the surviving sister Teresia Wambogo.

17. The Isuzu lorry was in a poor mechanical condition when the 1st respondent sold it at a meagre Kshs.160,000/= which he used to buy a piece of land. The land was later sold at Kshs.400,000/= which was shared between him and the 2nd house. He was not in a position to share the Kshs.200,000/= with his mother and sister since they were very hostile to him.

18. According to the 1st respondent, the deceased's property was shared equitably between the two houses. He states that the succession proceedings are not defective since all family members were informed and participated in the proceedings.

19. The relevant law is Section 76 of the Succession Act which provides for several grounds upon which a grant may be revoked.

20. These are as follows:-

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

(b) *That the grant was obtained fraudulently by making a false statement or by concealment 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 act as required by the law.*

21. The applicant in this case has not adduced any evidence to support the grounds that the grant is defective or that the grant was obtained by non-disclosure of a material fact to the case. Her evidence was that she was not informed and that she was disinherited by the 1st respondent. Further that she was not consulted during the distribution of the estate.

22. The 1st respondent denied that the filing of the case was not brought to the knowledge of the applicant and the other family members. He said the applicant was aware all along of what was happening and worked together with her mother the 2nd respondent whose objection against the grant of representation was dismissed. The applicant attended court during the hearing of the objection and during confirmation.

23. The burden of proof that the grant was obtained contrary to the law lies on the applicant who so alleges. It was held in the case of **SAMUEL WAFULA WASIKE VS HUDSON SIMIYU WAFULA** that:-

A grant obtained on the strength of false claims, without obtaining the consent of persons who had the right to the grant and on the basis of facts concealed from the court, is liable to revocation.

24. In the matter of the Estate of **ISAAC KIRERU NJUGUNA (deceased) Nairobi H.C. Succession Cause No. 1064 of 1994**, it was held that:-

A grant is liable for revocation where all the heirs have not consented to the mode of distribution and all the properties which make up the estate are not taken into account or distributed.

25. The grant in the above decisions were revoked on grounds stated therein.
26. In this case, I find it important to peruse the file from the filing stage to confirm the truth or otherwise the allegations made by the applicant.
27. For P&A 5 lists ten (10) beneficiaries starting with the two widows of the deceased and all their children. The petitioners were named as 1st respondent and the 2nd widow of the deceased Wanja Ileri.
28. The case was filed in 2001 and the 2nd respondent filed an objection against the 1st respondent being issued with letters of administration intestate. The objection was heard and dismissed by the court. The letters of administration intestate were issued to the 1st respondent and Wanja Ileri who were representing each of the deceased's houses.
29. During the hearing of the application for confirmation of grant, on 12/05/2015, the applicant and the 2nd respondent were in court and raised an objection to the distribution. Protests to confirmation were heard and dismissed. The 2nd respondent sought for review of the said orders unsuccessfully.
30. As much as the applicant says she was not informed of these proceedings, there exists a consent to confirmation of grant dated 3/03/2005 signed by her and the number of her identity card indicated therein. It states:-
- I do hereby consent to the confirmation of the grant of letters of administration made to Patrick Gicovi and Wanja Ileri by this honourable court on 4/12/2002.*
31. It was witnessed by her advocate Moses Nyambega & Co. By this action, the applicant withdrew her protest.
32. After the confirmation of grant, the applicant said that the 1st respondent sold the Nairobi residential house given to the first house without her knowledge. The truth is that the house was given to the applicant and the 1st respondent jointly. I found the evidence of the 1st respondent credible in that he told the court the truth as to the distribution and on how the Nairobi house was sold.
33. The sale of the property was done by the consent of the applicant and the 1st respondent and proceeds shared as explained by the 1st respondent. The applicant admitted receiving Kshs.1,400,000/= from the proceeds being half share of the original structure. The 1st respondent received an additional Kshs.1,300,000/= being the purchase price of the additional units he had constructed.
34. It is dishonest of the applicant to file this application for revocation of grant knowing very well that she participated in the court proceedings and even consented to the confirmation of grant. To make the matters worse, she had already received half share of the proceeds of the Nairobi residential house given to the first house. This fact was not indicated in her affidavit in support of the summons.
35. It was within her knowledge as a beneficiary with a share in the confirmed grant that the half share of the land where the family home sits is only held by the 1st respondent in trust for the first house. The other half is held by Job Muriithi for the second house.
36. It was not true that the applicant was disinherited by the 1st respondent as she puts it in this summons. The assets of the deceased was shared equitably between the two houses of he deceased.
37. I find that the applicant has failed to prove any of the grounds for revocation of grant as set out in Section 76 of the Act.
38. I find no merit in this summons and dismiss it accordingly.
39. It is hereby so ordered.

DELIVERED, DATED AND SIGNED AT EMBU THIS 4TH DAY OF JULY, 2018.

F. MUCHEMI

J U D G E

In the presence of:-

Ms. Ngige for Mugambi Njeru for Applicant

Both parties