



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
FAMILY DIVISION
SUCCESSION CAUSE NO. 78 OF 2014
IN THE MATTER OF THE ESTATE OF SAMUEL KINUTHIA WAWERU (DECEASED)

WANJIRU WAWERU BENSON APPLICANT

VERSUS

MARY WANJIKU KINUTHIA 1ST RESPONDENT

AGNES NJOKI KINUTHIA 2ND RESPONDENT

RULING

1. The deceased Samuel Kinuthia Waweru died intestate on 12th July 2002. He was survived by a widow Mary Wanjiku Kinuthia (1st respondent) and four children: Agnes Njoki Kinuthia (2nd respondent), Maureen Waweru, Archibald Waweru and Alex Njuguna. On 17th January 2014 the respondents petitioned this court for the grant of letters of administration intestate. A joint grant was issued to them on 3rd April 2014. It has not been confirmed. In the petition, the deceased's estate was indicated as comprising land parcels Dagoretti/Thogoto/1553, 1554 and 1555.

2. The applicant Wanjiru Waweru Benson is sister to the deceased. She brought this application on 21st February 2018 seeking the revocation of the grant. Her case was that following the death of their mother Dorcas Wangari Waweru, **Succession Cause No. 649 of 2001** was filed in which the deceased became the administrator of her estate. Subsequently, he inherited the three parcels of land following the confirmation of the grant. According to the applicant, he became registered to hold the parcels in trust for himself, for her and for their sister Ann Wambui. The applicant was to get parcel Dagoretti/Thogoto/1553 and share in Dagoretti/Thogoto/1555. She stated that both her and her sister ought to have been involved in the filing of the petition and ought to have been indicated in the list of beneficiaries. They had not been.

3. The respondents' case was that the deceased had, following his late mother's succession cause, become the registered and absolute owner of parcels Dagoretti/Thogoto/1553, 1554 and 1555; and that, he was not at all registered to hold the parcels in trust for the applicant. Consequently, the applicant was not the deceased's beneficiary and neither was she entitled to be listed in the petition as such or at all.

4. The applicant was represented by Mr. Githinji and the respondents by M/s Makori. Each side filed written submissions which I have considered.

5. Under **section 51(2)(g)** of the **Law of Succession Act (Cap. 160)** the petition filed by the respondents seeking letters of administration intestate in respect of the estate of the deceased was required to contain -

“the names and addresses of all surviving spouses, children, parents, brothers and sisters of the deceased, and of the children of any child of his or hers then deceased.”

It is not in dispute that applicant was the sister of the deceased who was entitled to be indicated in the petition. She was not indicated. It was not disputed that her consent was not sought or obtained at the time of the filing of the petition. She had not renounced her claim to the estate. It follows that the respondents were guilty of non-disclosure of a material fact by not including the applicant in the petition. To the extent that the petition did not include the name of the applicant, the same was defective in substance. It is now trite that where there is such defect and non-disclosure the grant has to be revoked (**In re Estate of Charles Ngotho Gachunga (Deceased) [2015]eKLR**).

6. The result is that the application is allowed. The grant issued to the respondents on 3rd April 2014 is hereby revoked.

7. So that this matter does not stay for long without resolution, and in the wider interests of justice, I issue a fresh grant in the joint names of 1st respondent Mary Wanjiku Kinuthia and applicant Wanjiru Waweru Benson. Within 60 days from today, the two, or any of them, shall file and serve application for the confirmation for the grant. It is during the hearing of that application that the court shall determine if the applicant and her sister were beneficiaries of the estate of the deceased.

8. Costs of this application shall be borne by the respondents.

DATED and SIGNED at NAIROBI 11TH OCTOBER 2018

A.O. MUCHELULE

JUDGE

DATED and DELIVERED at NAIROBI 17TH OCTOBER 2018

J.N. ONYIEGO

JUDGE