



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

FAMILY DIVISION

SUCCESSION CAUSE NO. 232 OF 2012

IN THE MATTER OF THE ESTATE OF DAVID KIMOTHO MIRURU (DECEASED)

SUSAN WANGUI KIMOTHO.....APPLICANT/OBJECTOR

VERSUS

MERCY WACHEKE KIMOTHO.....RESPONDENT/ADMINISTRATOR

RULING

1. The deceased David Kimotho Miruru died intestate on 11th October 2008. The respondent petitioned the court for grant of letters of administration in her capacity as a daughter of the deceased. According to the affidavit in support of the petition for letters of administration intestate, the deceased was survived by three children Dedan Gichuru Kimotho, Julia Mumbi Kimotho and the respondent. A grant of letters of administration intestate was issued to the respondent on 25th May 2012, and confirmed on 12th June 2013.

2. On 23rd May 2018 the applicant brought the present application dated 22nd May 2018 under certificate of urgency seeking the following orders:

- a) that the grant of letters of administration intestate issued to Mercy Wacheke Kimotho and confirmed on 12th June 2013 be revoked;
- b) that orders of collection and preservation of the estate do issue to preserve the said estate;
- c) that an injunction order do issue restraining the respondent, her agents and or her employees from interfering with or selling Plot No. NBI/Block 62/725;
- d) that once the grant is revoked the resultant registration of the properties of the grant be revoked and reinstated to their original form; and
- e) that once the grant is revoked the court be pleased to appoint other persons to be administrators of the estate and the estate be redistributed.

3. The application was based on the grounds that the grant was obtained fraudulently by the making of a false statement or by the concealment from court of material facts to the estate; that the respondent with the intention of defrauding the beneficiaries of the estate of the deceased informed the court that the deceased left behind three beneficiaries when the deceased actually left behind eight beneficiaries; that the respondent concealed to the court material facts regarding the properties owned by the deceased; that the proceedings to obtain the grant were defective in substance as all the beneficiaries were not involved; and that the grant was obtained by means of untrue facts essential in point of law to justify the grant.

4. The application was supported by the affidavit of the applicant dated 22nd May 2018. It was her case that the deceased died intestate and was survived by 8 children being the applicant, Ruphus Miruru Kimotho, Boniface Muhu Kimotho, Dedan Gichuru Kimotho, Miriam Njeri Kimotho, Julia Mumbi Kimotho, Lucy Muthoni Kimotho and the respondent; that with the intention of defrauding the other beneficiaries of the estate the respondent did not inform them of the intentions to petition for letters of administration intestate; that the respondent did not seek and obtain consent of the applicant and other beneficiaries at the time she petitioned for the grant of letters of administration and when she applied for confirmation of grant; that the respondent listed Plot No. NBI/Block 62/725, one share in plot number 1094 Juja Kalimoni plots and share in Dagoreti/Waithaka/187 as the only assets forming part of the estate of the deceased leaving out plot number 1097 Juja

Kalimoni, Mugeru plot number 187 and Waithaka Shopping Centre plot; that upon confirmation of grant the respondent caused letters of allotment with regard to Nairobi Block 62/725 Ayany Estate (NHC) to be issued to her on 9th September 2013 without the knowledge of the applicant and other beneficiaries; and that the applicant was apprehensive that the respondent was about to dispose of Nairobi Block 62/725 Ayany Estate (NHC) by way of sale without consent of the other beneficiaries and flee to the United States of America where her husband lives.

5. The application was opposed by the respondent dated 11th September 2018. She stated that she petitioned for the grant with the full knowledge and information of all concerned with the estate and the petition was duly gazetted in a publicly published gazette notice for any party with an objection to raise; that the apprehension of disposal of some assets was misplaced and no evidence had been availed to support the allegation; that the applicant had all along been aware of the succession proceedings and did not explain to the court why there was delay of more than six years in bringing the present application; that the applicants had abandoned their home and scattered away despite her spirited efforts to rehabilitate them; and that she pleaded with the applicants in 2011 to join her in the filing of the present cause but they had disregarded her advice.

6. Under **section 51(2)(g)** of the **Law of Succession Act (Cap. 160)** the petition filed by the respondent 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.”

7. It is not in dispute that applicant was a daughter of the deceased who was entitled to be indicated in the petition. She was not indicated. Four other children of the deceased were also not indicated in the petition. It was not disputed that the consent of the applicant or of the four other children of the deceased was not sought or obtained at the time of the filing of the petition. The applicant together with the other beneficiaries had not renounced their claim to the estate. It follows that the respondent was guilty of non-disclosure of a material fact by not including the applicant or her other siblings in the petition. To the extent that the petition did not include the names of all the beneficiaries of the deceased, 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**).

8. The result is that the application dated 22nd May 2018 is allowed. The grant issued to the respondent on 25th May 2012 and confirmed on 12th June 2013 is hereby revoked.

9. An injunction order shall hereby issue restraining the respondent, her agents and or her employees from interfering or selling Plot No. NBI/Block 62/725. Any registration of any properties forming part of the estate of the deceased is hereby cancelled so that the properties revert back to the estate.

10. 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 respondent Mercy Wacheke Kimotho and applicant Susan Wangui Kimotho. Within 60 days from today, the two, or any of them, shall file and serve application for the confirmation for the grant.

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

DATED and SIGNED at NAIROBI this 11TH day of DECEMBER 2018

A.O. MUCHELULE

JUDGE