REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 452 OF 2012

IN THE MATTER OF THE ESTATE MUTHONI MBUA WANGARURO (DECEASED)

RULING

1. The deceased herein died on 10th December 2005.

2. Representation to the estate was sought in the matter in a petition filed herein on 6th March 2012 by John Mbua Muthoni and Peter Wangaruro Ndichu, in their purported capacities as sons of the deceased. According to the petition, he was expressed to have been survived by his three children: John Mbua Muthoni, Simon Kagiri Kinyanjui and Peter Wangaruro Ndichu. He was said to have died possessed of Githunguri/Kiairia/T.35, T.38, T.47, 723 and 971. A grant of letters of administration intestate was made on 11th July 2012. The grant was confirmed on 5th February 2013; vide an application dated 14th January 2013. The estate was distributed in various proportions to the three individuals named in the petition as survivors of the deceased. A certificate of confirmation of grant was duly issued.

3. The application that I am required to determine is dated 21st June 2013. It is brought at the instance of Ruth Muthoni Kariuki, who seeks revocation of the grant herein. From the grounds set out on the face of the application, it appears that she claims to be one of the survivors of the deceased who was left out of the matter. She complains that she was not involved in the administration of the estate, and that the administrators had sold one of the assets to Simon Kagiri Kinyanjui, who the administrators falsely allege in their papers to be a son of the deceased. She alleges that the deceased held the property in trust for her and others.

4. In her affidavit in support of the application she states that she is a niece of the deceased, the deceased having been a sister of her mother and another. She avers that Githunguri/Kiairia/971 originally belonged to her grandfather, Mbua Wangaruro, the father of the deceased and the applicant's mother. Githunguri/Kiairia/T.35, T.38 and T.47, registered in the name of the deceased, were curved out of Githunguri/Kiairia/971. She asserts that Githunguri/Kiairia/971 was registered in the name of the deceased in trust for herself and her sisters, including the applicant's mother. She avers that the administrators of the estate are the adopted sons of the deceased, Simon Kagiri Kinyanjui was an impostor brought into the picture by the administrators. She avers that the deceased had been married to the late Maina Muigani, and the land was then registered in his name.

5. The applicant has attached copies of green cards in respect of Githunguri/Kiairia/T.35, T.38, T.47, 723 and 971. The card for Githunguri/Kiairia/ 723 indicates that the register opened on 29th August 1958, when Mburu Wakaimba was registered as the proprietor thereof. On 9th June 1982, the property changed to the name of Ruth Muthoni and on 10th June 1982 to the name of the deceased. The register for Githunguri/Kiairia/T. 38 opened on 1st May 1959, when the property was registered in favour of Maina Muigani. It was later transferred to the name of Muthoni Maina on 23rd July 1969, who later changed her name in the record on 10th June 1982 to read Muthoni Mbua Wangaruro. Githunguri/Kiairia/T.35 was registered on 1st May 1959 in the name of Maina Muigani. It was transferred to the name on Muthoni Maina in 1969, who later changed her name to Muthoni Mbua Wangaruro. The register for Githunguri/Kiairia/T. 47 opened on 1st May 1959, with Ngaruiya Gaitheri as the initial proprietor. The property was then transferred to Magu Njoroge on 7th July 1959. The next transfer followed on 18th June 1964 when the same was transferred to the name of Maina s/o Muigani. On 30th August 1972, the same was transferred to the name of Muthoni d/o Mbuwa, who later changed her name to Muthoni Mbua

Wangaruro. The register for Githunguri/Kiairia/971, on the other hand, opened on 18th July 1974, from a subdivision of a property described as parcel number 35. It was initially registered in the name of Maina Mwigani. On 23rd October 1975 it was gifted to Ruth Muthoni. On 10th June 1982 it was transferred to the name of Muthoni Mbua Wangaruro.

6. I have narrated the contents of the green cards since the answer to the application dated 21st June 2013 should turn on them. The applicant alleges that the alleged estate of the deceased was held in trust given that the property initially belonged to her grandfather, and she names him as Mbua Wangaruro. Indeed, she states that Githunguri/Kiairia/T.35, T.38 and T.47 were curved out of Githunguri/Kiairia/971. I have carefully scrutinized the record. The name of Mbua Wangaruro does not appear in any of the green cards, and therefore I find no basis upon which it can be concluded that the property in question ever belonged to him. It would appear to me that Githunguri/Kiairia/971 was not the original property as alleged from which Githunguri/Kiairia/T.35, T.38 and T.47 were excised. In fact it is Githunguri/Kiairia/971 which was curved out of Githunguri/Kiairia/T.35.

7. The application before me is brought under section 76 of the Law of Succession Act, Cap 160, Laws of Kenya. Under that provision, a grant is liable to revocation where there are problems with the process of obtaining the grant, with administration and where the grant has become useless and inoperative. The applicant's principal case is that the estate of the deceased comprises of assets that formed the estate of her grandfather, and it should therefore be available, not only to the family of the deceased, but also to the other grandchildren of the applicant's grandfather. The argument is that the property was held in trust by the deceased for her siblings.

8. I have stated above that there is no proof that the property in question ever belonged to the deceased. The papers placed on record do not bear the name of Mbua Wangaruro. Indeed, at demarcation it appears that the property was registered in the names of other individuals and it never came to the name of Mbua Wangaruro. In any event there is no averment as to the date of his death, or proof thereof. In short, there is no proof that the property was held in trust, which is the central plank in the applicant's case.

9. I am not satisfied that a case has been made out for revocation of the grant herein. The application dated 21st June 2013 should be dismissed and I hereby dismiss the same. I shall not make an order as to costs.

10. The entire estate comprises of assets situated within Githunguri of Kiambu County, consequently I do here order that the cause herein be transferred to the High Court of Kenya at Kiambu for disposal. It is so ordered.

DATED, SIGNED and DELIVERED at NAIROBI this 20TH DAY OF JANUARY, 2017.

W. MUSYOKA

JUDGE