



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT EMBU
SUCCESSION CAUSE NO. 122 OF 2011

In the matter of the Estate of NJERU MUTAMA (Deceased)

EUSEPHIA RIIMI NJERU..... 1ST APPLICANT

DORCAS WANJA NYAGA.....2ND APPLICANT

V E R S U S

MWANIKI NJERU.....RESPONDENT

R U L I N G

1. This is a ruling on summons for revocation of grant issued to the respondent and confirmed on 22/02/2016. The applicants are bringing the summons in their capacity as daughter and beneficiary of the deceased.
2. The parties by consent agreed to dispose of this application using their respective affidavits.
3. The applicants swore a joint affidavit in support of the application. The 1st applicant is referred to as the daughter of the deceased. The 2nd applicant states that she was married to one Julius Nyaga Njeru, the son of the deceased. They were blessed with two children Mary Karau Nyaga and Felista Nyakio Nyaga.
4. The respondent is described as the son of the deceased and a brother of to the 1st applicant. The 2nd applicant does not complain of being disinherited but says that the respondent was wrong to put himself as the trustee of her two minor children in respect of the shares he gave them. She also states that in filing the cause, she was not named as a beneficiary in the estate.
5. As for the 1st applicant, she claims a share in the deceased's estate in her capacity as a daughter. It is her claim that she was not informed or involved this case.
6. The respondent admits that the 1st applicant is a daughter of the deceased and that the 2nd applicant is his sister in law and the mother of the two minors Mary and Felista in respect of whom he enlisted himself as trustee. He states that the 2nd applicant left their home many years ago and was not available.
7. He is now ready to have the grant revoked and the 2nd applicant appointed the trustee of her minor children in respect of their shares. He says he acted in good faith when he provided for the children. The respondent states that the 1st applicant due to her lifestyle was not available for consultation with the respondent in the matters pertaining to this cause.

8. The chief's letter in this cause show that the deceased was survived by ten children. The name of deceased's late son also the applicant's husband Julius Nyaga Njeru appears on the list but that of the 1st applicant is missing. The respondent admits that the 2nd applicant is his sister in law. He does not deny that the 1st applicant is the daughter of the deceased.

9. In form P&A.5, the two applicants are not named as heirs or survivors of the deceased. The names of Eustus Njagi, Rutere Njeru, Elizabeth Njoki and Isaac Njagi are on the form but their relation with the deceased is not indicated. On the same form, there are four signatures not adjacent to the names which appears like they are of the same hand at a glance. I am not a hand writing expert and this justifies the use of the word "at a glance".

10. The respondent has not explained the anomaly in his documents. He has not explained why he denied the applicants a share if both are the children of the deceased. There is no other child who has claimed interest in the estate among the 10 named in the chief's letter.

11. This cause was gazetted on 7/06/2013 and letters of administration issued to the respondent on 23/07/2013. The grant was confirmed on 7/03/2016 as follows:-

L.R. Kagaari/Kanja/4401

Mwaniki Njeru - 0.45 ha.

Agnes Njoki Njue - 0.45 ha.

Michael Murithi Njeru - 0.45 ha.

Dennis Mutugi Njoki - 0.30 ha.

Lucy Karimi Njeru - 0.30 ha.

Peter Kinyua Njeru - 0.45 ha.

Dorothy Njeri Joseph - 0.45 ha.

Joseph Fundi Rutere - 0.45 ha.

Mwaniki Njeru - 0.45 ha. In trust of Mary Karau Nyaga and Felista Nyakio Nyaga

L.R. Kagaari/Kanja/4400

Diocese of Embu – Wholly in trust of Irangi Catholic Church L.R. Kagaari/Kanja/3234 Mungania Tea Factory Co. Ltd. - Wholly in trust of Ngurunga Tea Buying Centre

12. The grant provided for eight people including the respondent and the 2nd applicants minor children. There are some names in the chief's letter which do not appear in the confirmed grant while new names are in the grant. However, this court will deal with the two applicants who have claimed interest herein.

13. The respondent has not denied the claim of the two applicants and has admitted that they are heirs to the estate. As for the 2nd applicant, her two minor children have been given 0.45 ha. out of Kagaari/Kanja/4400. This share is equal to that of the respondent on the same parcel. This explains that the family of Julius Nyaga Njeru, the 2nd applicant's husband has been catered for.

14. The 2nd applicant being the mother of the minor ought to have been named as their trustee. She cannot claim another share in the estate because her family has been put on equal footing with the respondent and other beneficiaries who all inherited 0.45 ha. in the same parcel.

15. The 1st applicant has not been provided for in the estate. Two parcels Kagaari/Kanja/4400 and Kagaari/Kanja/3234 have been allotted to two different persons namely Catholic Diocese of Embu and Mungania Tea Factory. The 1st applicant being a daughter of the deceased is entitled to a share in her late father's estate. She did not claim any specific share or explain in her affidavit who the other beneficiaries are. This puts the court at a loss in allocating the 1st applicant any share. For this reason the matter on distribution can only be best resolved by the family.

16. The law of revocation of grant was explained in the case of **SAMUEL WAFULA WASIKE VS HUDSON SIMIYU WAFULA [1993]** where it was held that a grant obtained on the strength of false claims, without obtaining the consents of other beneficiaries was liable to revocation.

17. The conduct of the respondent of failing to inform or involve his siblings in this succession cause including the distribution was wrong. There is evidence of non-disclosure of facts material to the case. Firstly, the respondent did not fully disclose that the two minor children had a surviving parent when he presented himself as their trustee.

18. The name of the 1st applicant and that of the 2nd applicant were left out in the list of survivors/heirs of the deceased. The non-disclosure of the facts was material to this cause and is one of the grounds under Section 76 of the Act. The consents of the other beneficiaries were never obtained as required by the law.

19. I find the application merited and allow it as prayed. The grant is hereby revoked and a fresh one issued in the joint names of the respondent and the 2nd applicant. The family given 30 days to sort out the distribution. The summons for confirmation may be filed by both administrators jointly or by any of them within 30 days.

20. The application is therefore allowed.

DELIVERED, DATED AND SIGNED AT EMBU THIS 8TH DAY OF FEBRUARY, 2017.

F. MUCHEMI

J U D G E

In the presence of:-

Applicants present in person

Respondent present in person