



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MURANG'A

SUCCESSION CAUSE NO 43 OF 2014

**IN THE MATTER OF THE ESTATE OF KARANJA KAREMO - ALIAS KARANJA KAREMA –
DECEASED**

MARION WARAU GITHUNA APPLICANT

VERSUS

PATRICK NDUNGO KIRIRA.....ADMINISTRATOR/RESPONDENT

J U D G M E N T

1. On 18/10/1994 a grant of letters of administration intestate was issued in *Murang'a SRM Succession Cause No 42 of 1989* in respect to the estate of *Karanja Karema, Deceased*, to *Patrick Ngundo Kiria*. That grant was subsequently confirmed and certificate of confirmation of grant dated 28/09/1999 issued. The estate of the Deceased comprising LR LOC 5/GEITWA/342 was to be shared between Patrick Ngundo Kirira (2 acres) and Wilson Githinji Kamau (1 acre).

2. The Applicant herein, **Marion Warau Githuna**, applied by summons dated 10/12/2013 for revocation of the aforesaid grant upon the grounds –

(i) That the Respondent (Patrick Ngundo Kirira, who was the administrator) made a false statement of fact, to wit, that he was the only close relative of the Deceased entitled to inherit the estate.

(ii) That the Applicant was the only child of the Deceased, a fact that the Respondent knew, yet he did not involve her in the succession proceedings.

(iii) That as a result the Applicant was completely disinherited, merely because she was a married daughter, contrary to the Law of Succession Act, Cap 160.

(iv) That in any event the value of the Deceased's estate exceeded KSh.100,000/00 the then pecuniary limit of the jurisdiction of the Senior Resident Magistrate's Court, which thus had no jurisdiction to deal with the matter.

The summons was supported by the Applicant's affidavit.

3. The Respondent opposed the summons by a replying affidavit filed on 25/02/2014. The long and short of that affidavit is that the Applicant fully participated in the proceedings before the lower court where she filed objection to issuance of grant to the Respondent and also to confirmation of the same; that her objections were fully heard by way of oral evidence and dismissed by the lower court; that the Applicant then appealed vide *Nyeri HC Civil Appeal No 106 of 1999* which was subsequently dismissed for want of prosecution; and that therefore the summons for revocation of the grant is entirely without merit.

4. Upon directions of the court, the summons for revocation was heard by way of oral evidence. The Applicant testified and called one witness. The Respondent similarly testified and called one witness. I have considered the witnesses' testimonies, along with the evidence contained in the parties' affidavits.

5. The following facts are not in dispute –

(i) The Deceased dies intestate in March 1989, long after coming into operation of the Law of Succession Act, Cap 160.

(ii) The Deceased's estate comprised only the one parcel of land, LR LOC 15/GEITWA/342.

(iii) The Applicant was the only child of the Deceased surviving him.

(iv) The Respondent was not a child but a grand-nephew of the Deceased.

6. Ordinarily, and under section 38 of the Law of Succession Act, the Applicant should have been the one inheriting her father's free estate. It turns out however, and contrary to her assertions, that she was fully aware of the proceedings in Murang'a SRM Succession Cause No 42 of 1989. She filed therein objection to the grant being issued to the Respondent, or confirmation of the same as sought by the Respondent.

7. The relative claims of the Applicant and the Respondent were fully adjudicated upon by way of a trial upon tested oral evidence. In a considered judgment delivered on 28/09/1994 the lower court found in favour of the Respondent and rejected the Applicant's claim.

8. The Applicant then appealed against that judgment vide Nyeri HC Civil Appeal No 106 of 1999. She never prosecuted that appeal, and on 13/02/2009 (10 years after it was filed) the appeal was dismissed for want of prosecution. Nearly five (5) years later, the Applicant filed the present application for revocation.

9. The main issue here that the court must decide is whether the Applicant should be allowed to re-open this matter in the circumstances of this case? The short answer to that issue is that she should not be permitted to do so. Her claim was fully adjudicated by the lower court upon tested oral evidence. She was not satisfied with the lower court's decision and she appealed to the High Court, as she was entitled to do. For ten (10) years she did not prosecute her appeal, which was then dismissed for want of prosecution. She waited another five (5) years to file the present application.

10. The Applicant had her day in court in the lower court where she was fully heard. Being dissatisfied with the judgment of that court her remedy lay in appeal. She indeed appealed but never bothered to prosecute her appeal, which was dismissed for that reason. What she is now seeking to do is to take these matters back to square one! She wants to have another trial in respect to her father's estate. She is in short seeking to have a second bite of the cherry!

11. Despite the apparent justice of the Applicant's claim in her father's estate, litigation must come to an end. This present litigation ended with the Applicant's failure to prosecute her appeal against the judgment of the lower court. This court will **not** revive the litigation and take back matters some 28 years!

12. In the circumstances the summons dated 10/12/2013 for revocation of grant is hereby dismissed. Parties shall bear their own costs. It is so ordered.

DATED AND SIGNED AT MURANG'A THIS 16TH DAY OF FEBRUARY 2017

H P G WAWERU

JUDGE

DELIVERED AT MURANG'A THIS 17TH DAY OF FEBRUARY 2017