



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT EMBU
MISC. SUCCESSION CAUSE NO. 134 OF 2005

IN THE MATTER OF THE ESTATE OF MAGONDU KING'URU (DECEASED)

JANE WANJIKU KINYUA.....1ST APPLICANT

HELLEN WARUGURU WANJOHI.....2ND APPLICANT

MAGDALINE WAMBUI BURI.....3RD APPLICANT

VERSUS

NAOMI WAIRIMU MAGONDU.....1ST RESPONDENT

JOYCE NJERI MAGONDU.....2ND RESPONDENT

RULING

1. The deceased Magondu Kiguru died intestate on 13th May, 1988. Joyce Njeri Magondu daughter of the deceased and the widow Naomi Wairimu Magondu, in Kerugoya Succession Cause No. 24 of 2002 obtained the grant of letters of administration intestate on 18/03/2002. The grant was confirmed on 11/10/2002. The deceased's asset was land reference number Kiine/Kiangai/488 measuring 0.76 ha which was to be shared equally between Joyce Njeri Magondu and Naomi Wairimu Magondu.

2. The applicants Jane Wanjiku Kinyua, Hellen Waruguru Wanjohi and Magdalene Wambui Buri are married daughters of the deceased. They have now filed a summons for revocation/annulment of grant dated 29/08/2005 based on the following grounds in the affidavit of the 1st applicant:-

(a) *That the grant was obtained fraudulently or by concealment of facts material to the case.*

(b) *Proceedings were defective in substance.*

(c) *That the deceased's married daughters were left out in the distribution of the estate.*

(d) *That the married daughters were not informed of the filing of the succession cause.*

3. The parties adduced *viva voce* evidence before Khaminwa, J (as she then was). I took over the case after all the evidence was given.

4. Both parties filed submissions in support of their arguments. Magee wa Magee & Co. represented the applicants while Gacheche wa Miano advocate was for the 1st respondent, now deceased. The 2nd respondent appeared in person.

5. The evidence of the applicants was that the administrator/respondents did not inform them that they were filing the succession cause.

6. The applicants contend that although they are married, they were rightful beneficiaries of the estate and should not have been disinherited.

7. Their names were not included in form P&A. 5 as beneficiaries. The court in the Kerugoya Succession cause was not informed that the deceased had other children except the four who were named in Form P&A. 5 namely:-

Naomi Wairimu Magondu - widow

Joyce Njeri Magondu - daughter

David Maina Magondu - son

8. The deceased had two houses according to the applicant. The 1st wife Charity Wamuirua Magondu pre-deceased her husband and had eight (8) children viz

(i) David Maina Mutungi

(ii) Eunice Nyaguthii (Deceased)

(iii) Mary Wamuyu Wanjohi

(iv) Jane Wanjiku Kinyua

(v) Joyce Njeri Magondu

(vi) Hellen Waruguru Wanjohi

(vii) Magdaline Wambui Buri

(viii) Jemimah Wachera Magondu

9. The 2nd wife Naomi Wairimu Magondu has six (6) children as follows:-

(i) Wachuka Magondu

(ii) Maina Magondu

(iii) Eunice Magondu

(iv) Wangari Magondu

(v) Mwangi Magondu

(vi) Kariuki Magondu

10. The applicants are blood sisters of Joyce Njeri Magondu the 2nd respondent. They have proposed the following Kiine/Kiangai/488

Naomi Wairimu Magondu ½ share

Joyce Njeri Magondu

Maru Wamuyu Kinyua

David Maina Mutugi ½ share in equal shares

Hellen Waruguru Wanjohi

Magdaline Wambui Buri

11. The witnesses of the applicants testified that the husband of one of them was deceased while there are others who are living in the home of the deceased. No names were given of who was pre-deceased by her spouse or who had left her husband and returned to her parent's home.

12. The evidence of the 2nd respondent is that the applicants are happily married wherever they are and have land. As for her, she said that she is the only unmarried daughter of the deceased. She testified that the half share she was the entitlement for the first family and that she is the only one entitled to the whole share in her circumstances. The end respondent further argued that her only brother David Maina Mutugi has no wife or children and should not inherit from the 1st family's portion.

13. It was further stated that the 2nd respondent has four (4) children of her own and that responsibility supports her case for sole inheritance of the half share. She further claimed that her sister Jane Wanjiku had taken possession of the tealeaves on the family's share from her.

14. The 2nd respondent called witnesses who testified that she was not married and that her sisters the applicants were. Some of the witnesses supported the respondent's sole inheritance of the half share.

15. The applicants in their submissions argued that all the children of the deceased are entitled to shares in the estate of their deceased father. They urged the court to allocate them their rightful shares in their late father's estate.

16. The 1st respondent submitted that the grant had already been executed and that the land Kiine/Kiangai/488 was divided into two equal shares, one in her name and the other one in the name of the 2nd respondent who is now deceased. She argues that there is need to appoint an administrator of the estate of Joyce Njeri before the grant is annulled or revoked.

17. She further states that she has extensively developed her half share and that she would not want to be displaced in the event that the grant is revoked or annulled.

18. The issues of determination in this case are:-

(i) Whether the grant was obtained by fraud or by concealment of material facts.

(ii) Whether the grant is defective in form and substance.

(iii) Whether the applicants have made up a case for the annulment/revocation of grant.

19. The applicants adduced evidence to the effect that they were not informed by the administrator that she was filing the succession cause and further, that their names were left out in the proceedings as beneficiaries of the deceased's estate.

20. There was also evidence to the effect that the applicants were not involved in the distribution of the estate.

21. In her evidence the 1st respondent supported the applicant's case that they ought to have been included as beneficiaries and given their rightful shares. She did not oppose the application including the mode of distribution proposed.

22. The 2nd respondent opposed the application arguing that the applicants are married and should not inherit and that her unmarried brother David Maina Mutugi should not inherit any share. It was the 2nd respondent's plea that with her four children, she was entitled to inherit the half share allocated to the first family.

23. The applicant's evidence on the allegations of fraud, concealment of facts material to the case was not controverted. The 2nd respondent admitted that she did not include the names of the applicants in the list of beneficiaries. She did not deny that the applicants were not informed of the filing and progress of the Kerugoya succession cause. It was also not denied that the applicants were not involved in the distribution of the estate.

24. It is not in dispute that the applicants are the children of the deceased by his first wife who is deceased. The 2nd respondent is their sister and the law recognizes them as beneficiaries of the estate.

25. Section 51(2) of the Act provides that all the beneficiaries be included in the succession proceedings during filing.

26. It is my considered opinion that the administrator/1st respondent obtained the grant without disclosing facts material to the case. These facts include the failure to include the applicants as beneficiaries and that they were not at all brought on board during the distribution. I find that the applicants have established a case for revocation of the grant.

27. The law applicable in distribution of the estate of the deceased is, of course, Section 40 of the Law of Succession Act. He was polygamous and was survived by one spouse and several children. The provisions do not discriminate against any married or unmarried child of the deceased. All children are treated equally and the surviving widow treated as an additional unit.

28. It is in the interest of justice that the issue of distribution be mentioned since it was brought out in the evidence. This is for the purpose of saving precious judicial time where the court may have to hear the matter again to determine distribution. However, the administrators in consultation with all the beneficiaries are at liberty to reach an amicable settlement which will be fair and just to all the players.

29. The 2nd respondent's children are entitled to their deceased mother's share and should be involved in the distribution of the estate.

30. It is hereby ordered that:-

(a) The grant issued to Naomi Wairimu Magondu and Joyce NjerinMagondu on 18/03/2002 and confirmed on 11/10/2002 be and is hereby revoked.

(b) A fresh grant to issue in the joint names of Naomi Wairimu Magondu and Jane Wanjiku Kinyua.

(c) That the administrators or any one of them do file a summons for confirmation of grant within 30 days.

31. That each party meets its own costs of this application.

DELIVERED, DATED AND SIGNED AT EMBU THIS 21ST DAY OF FEBRUARY, 2017.

F. MUCHEMI

J U D G E

In the presence of:-

Mr. Abubakar for Applicants

2nd Respondent present