



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

SUCCESSION CAUSE NO. 658 OF 2012

IN THE MATTER OF THE ESTATE OF THE LATE KIRIANKI KANANA (DECEASED)

EDWARD GICHURU RWITO.....INTERESTED PARTY/APPLICANT

VERSUS

JAPHET NKARI MBURUGU.....PETITIONER/RESPONDENT

RULING

This cause relates to the estate of the late **KIRIANKI KANANA** who died intestate on 15th August, 1986 as per certificate of Death given on 27th September, 2012- No. 166104.

According to the chief's letter dated 21st August, 2012 the deceased had only one child, namely Agnes Muthoni who is comfortably married elsewhere that the deceased had wished his nephew Japhet Nkari to inherit his land upon death and which wish the family members had accepted. It is not indicated who the family members are.

The land in question is indicated as L.R.NO.NKUENE/U-MIKUMBUNE/271 measuring 0.90 Hectares. Japhet Nkari Mburugu filed a petition and grant of Letters of Administration was made to him on 3rd June, 2013.

Japhet Nkari Mburugu filed application for Confirmation of Grant under Certificate of Urgency dated 9th July, 2013 for reasons that Agnes Muthoni one of the beneficiaries was seriously sick and needed urgent treatment. Application was granted and certificate of confirmation issued devolving the entire estate to Japhet Nkari Mburugu.

By a letter dated 15th September 2014 DCIO Imenti South requested the Deputy Registrations to supply necessary and certified copies of documents which facilitated the transfer of land from the deceased name to the current owner.

There is letter dated 28th July 2014 from office of chief Mikumbune Location informing the court that the deceased herein died on 12th April, 1978 and was survived by :-

1. Curi M'Kirianki - daughter- now deceased
2. Anyes Rigiri Kirima- daughter
3. John Mwebia Rwito – grandson

4. Edward Gichuru M'Rwito – grandson

5. Mary Karambu –niece

The letter is annexure EGM1 attached to an application dated 26th September, 2014 seeking that an order of inhibition issues restraining registration of dealings in L.R.NO.NKUENE/U-MIKUMBUNE/271 pending hearing and determination of application.

That confirmation of grant issued to Japheth Nkari Mburugu on 12th July, 2013 be revoked and cost of application be made too applicant. The application dated 26th September, 2014 is supported by Affidavit of Edward Gichuru Rwito and grounds on face of application.

The grounds and that the proceeding to obtain grant were defective:-

- The grant was obtained fraudulently by making false statement.
- The grant was obtained irregularly by concealment from court of material facts.
- That grant was obtained by means of untrue allegations.
- That the Chief's letter relied upon was forged.
- It was also claimed that the petitioner intended to alienate the suit land.

In the Supporting Affidavit it was averred that Joel Muriungi Kirima who was purported to have written letters dated 12.8.2012 had disowned it and wrote by hand a letter dated 28th July 2014 (it can be seen that signatures and evens stamps are totally different in the two letters) EMGII.

It was also averred that respondent's hurry to apply for confirmation of grant before expiry of 6 months was evidence of his fraudulent conduct.

It was also averred that event the only daughter of the deceased named in the forged chief letter was not aware of the proceedings in the Succession Cause. It was averred that the petitioner intended to disinherit this proper beneficiaries to the estate and conducted the proceedings secretly.

The application dated 26th September, 2014 was certified urgent and, order of inhibition issued restraining registration of any dealing on L.R.NO. NKUENE/U-MIKUMBUNE/271 pending hearing and determination of the application. The applicant was on 16th August, 2016 directed to file submissions and serve when respondent failed to respond to the application.

On 4.4.2017 when matter came up to confirmation submissions filed, the respondent was present and he said he had filed a Replying Affidavit which he wished to reply upon in opposing the application for revocation of grant.

In the Replying Affidavit the respondent claimed he was biological child to the deceased and therefore entitled to benefit of the estate. He said the letter alleged to be forged was written by chief. He admitted that mother to applicant Curi M'Kirianki and Agnes Muthoni were his sisters and daughters to the deceased. He said the applicant lives with his father in the land at Kigane village where there mother and daughters to deceased was buried.

The respondent did not respond to the allegations forged of the Chief's letter and did not say why it was not indicated the deceased had a mother child who even though deceased left survivors. In consideration of the grounds of application and supporting affidavit as well as the submissions filed herein together with the replying affidavit by the respondent as well as the applicants counsels authorities relied upon by the applicants counsels i.e. in the matter of the estate of Mugo Njagi - Misc. Succession Appeal No. 39 of 2012, this court finds as follows:-

Section 66 of the Law of Succession Act provides for a person to be given preference to administer estate of deceased estate where died intestate being spouse or spouses with or without association of other

beneficiaries;

Other beneficiaries entitled on intestacy with priority according to their respective beneficial interest as provided by part V of the Act.

Under part V, Section 39(1), even where an intestate had left no surviving spouse or children, the intestate estate devolves to the father or if dead mother if dead brothers and sister or if dead any child or children of the deceased brothers and sisters on equal shares.

This therefore means that the respondent herein does not stand in priority against the children of the deceased or his father or aunties as far as the intestate estate of the deceased is concerned.

On that ground alone this court would be satisfied that he was in property issued with grant because it is clearly indicated in the letter he relied upon to petition the court and which letter is alleged to be forged (and there evidence of criminal investigations to the alleged forgery) that he is nephew and not biological child to the deceased.

Secondly, it has been proved that he concealed material information to the court. He did not disclose that other than Agnes Kigiri Kirima the deceased also had another child by the name Curi M’Kirianki who is now deceased. His haste in obtain certificate of confirmation before the expiry of statutory 6 months on allegations that Agnes Muthoni Kirima had been involved on Road Traffic Accident and required urgent medical attention was also suspicious. There was no consent from the said Agnes to confirmation. The same chief he claimed wrote identifying him as the beneficiary to the estate wrote to the estate also wrote annexures “EGMI” giving the correct identities of the beneficiaries the respondent had not disputed this.

In the circumstances that he respondent fraudulently obtained grant of letter of administration made on 3rd June, 2013 same is here by revoked and/or annulled. This court orders that all transactions attendant to certificate of confirmation issued on 13th July, 2013 are reversed as null and void *ab initio*.

The surviving daughter to the deceased and the appellant being the surviving son to the deceased daughter to deceased herein are at liberty to apply for confirmation of grant and distribution of the estate between the surviving daughter and the children of the deceased daughter.

Respondent will pay costs of the application.

Ruling signed dated and delivered this 4th day of May, 2017

In the presence of:-

Court Assistant - Penina

Applicant – Ms Nyaga advocate for Interested party/Applicant

Respondent /Petitioner - PIP

HON. A.ONG’INJO

JUDGE