



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
FAMILY DIVISION
IN THE MATTER OF THE ESTATE OF WAWERU NJUURI (DECEASED)
SUCCESSION CAUSE 2303 OF 2004
(SUCCESSION CAUSE 185 OF 1989 KIAMBU LAW COURTS)

RULING

PLEADINGS

Waweru Njuuri (deceased) died on 4th October 1975.

According to Chief's letter of 13th September 1989 the deceased was survived by;

1. Lydia Wanjiku Waweru - widow
2. Edith Wanjiku Gachoya- daughter-in-law
3. Peter Ndichu Waweru-son
4. David Mwaura Waweru-son
5. Samuel Wachira Waweru-son
6. Maria Nduta Waweru- daughter
7. Peter Gichiri- son
8. Benson Karoki- son
9. Dancan Gachoya-son
10. Njeri Kimathi-daughter
11. Ngendo Muchai-daughter
12. Gathoni Njoroge- daughter
13. Wangui Kinuthia- daughter
14. Karugi Gicho- daughter

15. Njeri Wanyakanyi-daughter

Lydia Wanjiku Waweru and Peter Ndichu filed petition for grant in Kiambu Law Courts with consents from beneficiaries. The grant was issued on 6th March 1990.

The widow deceased on 25th March 2004. The grant was confirmed on 30th June 2004 as follows;

Land Parcel Githunguri/Kimathi/130 was to be shared as follows;

1. Peter Ndichu Waweru-2.17 acres
2. Edith wanjiku Gachoya-2.17 acres
3. David Mwaura Waweru-2.16 acres
4. Maria Nduta Waweru- 0.50 acres
5. Peter Ndichu Waweru- 0.50 acres
6. Edith Wanjiku Gachoya-0.50 acres
7. David Mwaura Waweru-0.50 acres

On 27th July 2004 Maria Nduta Waweru filed Summons for revocation of grant under **Section 76 a) & c) of the Law of Succession Act Cap 160** in High Court in **Succession Cause 2303 of 2004** (instant Court File) as follows;

Lydia Wanjiku Waweru and Peter Ndichu Waweru filed **Succession Cause 185 of 1989 in Kiambu Law Courts** obtained grant and confirmed grant without consulting the Applicant and obtaining her consent. They also failed to disclose material facts that she is eldest daughter of the deceased and that she is a dependant of the deceased and resided and resides in the suit property

Land Parcel Githunguri/Kimathi/130 with her 8 children and she farms on the land.

The Applicant was astounded that the Respondents obtained confirmed grant on 2nd October 1990 as per attached documents marked **MNW3** as follows;

1. Peter Ndichu Waweru- 2.17 acres
2. Edith wanjiku Gachoya- 2.17 acres
3. David Mwaura Waweru-1.17 acres
4. Lydia Wanjiku waweru -2 acres

On 1st May 2004, Peter Ndichu Waweru, Edith Wanjiku Gachoya and David Mwaura Waweru demolished her house and threatened to demolish her other house and to evict her from the suit property which is part of the estate of the deceased.

After demolition, she reported the matter to the Area Assistant Chief Who Ordered the Respondents to desist from further wrongful acts of evicting her from their father's land. He advised her to lodge a caution which she did and she moved to file the instant application. She attached letter from Assistant Chief marked **MNW2**

The Application sought stay of the enforcement of the confirmed grant until hearing and determination of the application.

On 7th September 2004, Samuel Wachira Waweru, Benson Karoki Waweru and Peter Gichiri Waweru sought to be joined as Co applicants with Maria Nduta Waweru.

Peter Ndichu Waweru filed Replying Affidavit on 1st November 2004 and contended that suit property Land Parcel Githunguri/Kimathi/130 was for children of Lydiah Wanjiru Waweru. Prior to their father's death, the older sons were bequeathed Land Parcel Githunguri/Kimathi/133 and it was registered in the name of Dancan Gachoya in trust for his brothers. Later it was subdivided into 3 portions for Peter Gichiri , Benson Karoki and Dancan Gachoya respectively. Samuel Wachira was bequeathed a portion of Land Parcel Githunguri/Kimathi/134 during demarcation.

On 12th October 2006, Samuel Wachira filed Replying Affidavit and asserted that the Peter Ndichu and Mwaura Waweru filed Succession Cause 185 of 1989 secretly and obtained letters of administration fraudulently as they forged written consents that;

1. Samuel Wachira
2. Naomi Gakui
3. Benson Karoki Waweru
4. Ngendo Muchai
5. Maria Nduta
Gichiri Waweru
6. Njeri Kimathi

As a result of the forgery by Peter Ndichu and Mwaura Waweru of their siblings signatures in **Succession Cause 185 of 1989** there is pending **Criminal Case 1659 of 2004** pending in Kiambu Law Courts against the 2 suspects.

The Applicant through Counsel filed written submissions and stated as follows;

By Consent of the parties entered on 8th February 2012, the Applicant was added as Co-administrator and the 1 st house abandoned their quest of beneficial interest in the suit property. The Applicant relied on section 35 of Law of Succession Act on equal distribution of the deceased's estate by and for the children. The 2nd house and respective shares comprise of;

1. Peter Ndichu- 0.88 ha
2. David Mwaura - 0.88 ha
3. Maria Nduta & - 0.88 ha
4. Samuel Gachoya- 0.88 ha (deceased) w/o deceased Edith Wanjiku stepped instead of the deceased.

The Respondents filed written submissions on 4th April 2014 headed (erroneously) Petitioners Written Submissions. They allege 3 grounds; first that the Applicant was aggrieved because she was no appointed administrator of deceased's estate/. Yet **Section 66 of Law of Succession Act Cap 160** alludes to beneficiaries appointing and consenting to appointment of administrators in default of which the Court shall appoint them. From the record I found that the Applicant was jolted into action when the administrators sought to evict her from the suit property and actually demolished one house. It is at that point the Applicant sought assistance from the Police and Chief and on enquiring from Kiambu Registry realized that the administrators secretly filed Succession 185 of 1989 and did not inform, consult or obtain

consents from the Applicant and other beneficiaries. Subsequently investigations resulted in **Criminal Case 1659 of 2004** where the Petitioners were charged with forgery.

Secondly, the Petitioners/Respondents averred that the Applicant was informed, consulted and apparently gave consent to the appointment of administrators and confirmation of grant . again, this fact is not borne by the evidence on record.

Thirdly , the Applicant waited 14 years to seek to revoke and annul the grant and brought the application after demise of her mother. The Court reading of Section 76 of the Law of Succession Act which provides;

A grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by any interested party or of its own motion-

a. That the proceedings to obtain the grant were defective in substance;

b. That the grant was obtained fraudulently by the making of a false statement or by the concealment from the court of something material to the case;

c. That the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently.....

The Law does not provide timelines the revocation and annulment of grant is not time-bound but each case is determined on its own circumstances. In the instant case; the Administrators did not involve the Applicant in the succession process, they have not contested that she is a child of the deceased and entitled to beneficial interest in the deceased's estate.

Finally, the Respondents raised the issue of setting aside the written consent by both parties on 8th February 2012.

Kenya Commercial Co Ltd (1982) vs Specialized Engineering Co. Ltd KLR 485 the Court stated;

A consent order entered into by Counsel is binding on all parties to the proceedings and cannot be set aside or varied unless it is proved it was obtained by fraud, collusion or by agreement contrary to the policy of the Court or where consent was given without sufficient material facts or in misapprehension or ignorance of such facts in general for a reason which would enable the Court to set aside an agreement.

Therefore the upshot of these proceedings based on evidence on record is that Application of 27th July 2004 merits the grant being revoked and annulled because, the evidence on record confirms that the applicant one of the beneficiaries of the deceased's estate was not involved and her consent obtained in obtaining grant , appointment of administrators and confirmation of grant proceedings. However, the outcome of the application was compromised because of the consent filed by the parties. Therefore instead of revoking the grant and confirmed grant under **Section 76 Law of Succession Act Cap 160**, since the Applicant has been appointed co- administrator and the 1st house abandoned their claim to the suit property, the proposal by the Applicant is most fair and equitable in the circumstances. The Applicant lived and lives on the suit premises and was a dependent to the deceased's widow under Kikuyu customary law. She is entitled to inherit from her mother's portion.

DISPOSITION

1.The application filed on 27th July 2004 is granted.

2. The Application is compromised by Consent filed on 8th February 2012.

3. The Applicant has been appointed Co administrator to the deceased's estate.

4. The distribution of the estate shall be as per the Applicant's proposal of 20th March 2012

5. The Administrators shall apply for confirmation of grant in light of the proposal that the suit property Land Parcel Githunguri/Kimathi/130 be divided equally amongst the beneficiaries of the 2nd house namely;

1. Peter Ndichu- 0.88 ha

2. David Mwaura - 0.88 ha

3. Maria Nduta & - 0.88 ha

4. Samuel Gachoya- 0.88 ha (deceased) w/o deceased Edith Wanjiku stepped instead of the deceased.

6. Each party to bear own costs.

7. The Court file shall be kept in the strong room

DELIVERED DATED AND SIGNED IN OPEN COURT IN NAIROBI ON 20TH JULY 2017

M. W. MUIGAI

JUDGE

IN THE PRESENCE OF: