



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
FAMILY DIVISION
IN THE MATTER OF THE ESTATE OF WAWERU CHEGE (DECEASED)
SUCCESSION CAUSE 2453 OF 2002
RULING

BACKGROUND

Waweru Chege died on 23rd January 2000.

The family of the deceased comprised of ;

- 1) Mary Wanjiru Njogu -niece
- 2) Godfrey Kinyanjui Waweru- son
- 3) Nganga Waweru- son
- 4) Kariuki Waweru-son
- 5) Njunge Waweru-son
- 6) Mary Wanjiru Waweru -daughter
- 7) Margaret Wambui Waweru-daughter
- 8) Hanna Nyambura Waweru-daughter
- 9) Gathoni Waweru-daughter

The assets that comprised of deceased's estate are;

- a) Muguga/Kahuho 676
- b) Muguga/Kahuho T43

On 24th September 2002, Mary Wanjiru Njogu filed petition for grant of letters of administration after she cited the beneficiaries of deceased's estate. She was issued with grant on 5th October 2004.

On 20th December 2004, Godfrey Kinyanjui Waweru on behalf of the children of the deceased filed summons for revocation of grant. The applicants relied on the grounds that the proceedings to obtain

grant were defective in substance, the grant was obtained by means of an untrue allegation essential in point of law to justify the grant and the grant was obtained fraudulently by making false statement and concealment from Court of material facts to the case.

The Objector contends that they were served with citation to accept or refuse application for letters of administration on 27th April 2004 and on 4th May 2004 instructed their advocates to enter appearance but the advocates were not served with the petition and their advocates did not follow up the matter or peruse the Court file.

Mary Wanjiru Njogu is not a beneficiary of the deceased's estate and the deceased was not holding the suit property Muguga/Kahuho/676 in trust for her father. They attached a letter dated 10th May 2002 from the Chief of Muguga that he held a meeting on 22nd February 2002 with Simon Nganga Waweru, Godfrey Kinyanjui Waweru and Joseph Kariuki Waweru and Mary Wanjiru Njogu and it was found that the administrator could not substantiate her claim to the suit property.

The Objector filed Further affidavit on 17th March 2009 and alluded to the fact that Muguga/Kahuho/676 emanated from subdivision of the original Land Parcel Muguga/Kahuho/244 which was held by Kaberi Kamenju elder brother of the deceased herein in trust for the deceased Waweru Chege and Kamenju Kabiru a cousin whom they bought the land together, and at the time of subdivision the said Willy Kariuki Chege, was alive as he died on 14th June 1978 and he had no children or spouse. The land was never registered in the name of their grandfather and it is not ancestral land.

In response, the Petitioner filed further affidavit and stated that their grandfather had 3 sons; Willy Kariuki, her father, Kaberi Kamenju and Waweru Chege the deceased herein. The suit property Muguga Kahuho/244 was registered in the name of Kaberi Kamenju to hold in trust for the other siblings. When Kaberi Kamenju died the suit property was subdivided and transferred to Waweru Chege and Willy Kariuki. They cultivated the land and their families too until the deceased died in 2002 and she was restrained from access to the said land.

PROCEEDINGS

The matter could not proceed with oral evidence as the same has been in Courts since 2002 and most of the witnesses who filed witness statements are deceased. Counsel for both parties agreed by Consent to have the court adopt the written statements as evidence.

On 26th January 2010, Kinyanjui Waweru filed affidavit and deposed that Willy Kariuki Chege did not have a wife or child(ren) he lived with his brother, the deceased and on his death was buried by the deceased on the land. He had no land.

On 27th January 2010, Elizabeth Gathoni Njoroge daughter of the deceased filed affidavit and said the Petitioner Mary Wanjiru Njogu is married has never lived with them and the claim that she is Willy Kariuki's daughter is not true.

On 27th January 2010 Samuel Njoroge Thuku half brother of the deceased; filed affidavit and stated Willy Kariuki Chege had no family, child or spouse; and he never saw the Petitioner Mary Wanjiru Njogu cultivating the suit property Muguga Kahuho/676.

On 27th January 2010 Samuel Njoroge Thitu is a distant relative to the deceased and he deposed in an affidavit that Muguga Kahuho/244 was registered in the names of the deceased's elder brother Kaberi Kamenju. Later, it was subdivided between the deceased and his elder brother during the lifetime of Willy Kariuki Chege. He did not object or demand any land, he had no wife or children. Mary Wanjiru Njogu did not lay claim of the land during his lifetime.

By an affidavit filed on 23rd October 2014, Nganga Waweru deposed that their late father the deceased was registered proprietor of Muguga /Kahuho/676 which was hived off through subdivision of Muguga /Kahuho/ 244.

By Witness Affidavits filed by Nancy Muthoni Itotia and Benjamin Thitu Muchene cousins of Mary Wanjiru Njogu, filed on 15th December 2009; they deposed that the said Mary Wanjiru Njogu is daughter to Willy Kariuki Chege who married their aunt her mother Njeri Kariuki and had the only child Mary Wanjiru.

By Witness affidavit filed on 18th February 2015 Francis Njoroge who served as Area Chief of Muguga Location Kikuyu deposed that he knew the deceased very well. He confirmed that Mary Wanjiru Njogu was daughter of Willy Kariuki brother to the deceased who died in a road traffic accident in 1978. That Mary Wanjiru Njogu has been cultivating on the said land and the same belongs to the Petitioner as it belonged to her father Willy Kariuki.

The deceased died intestate and was survived by 9 members of the family which he documented in his letter dated 22nd November 2002.

ISSUES

The pertinent issues for determination and have a bearing on appointment of administrators and obtaining the grant as gleaned from the pleadings and evidence in the Court file are;

- a) Is that there is a simmering dispute whether the Petitioner Mary Wanjiru Njogu is child of Willy Kariuki Chege as she alleged;
- b) whether the suit property, Muguga/ Kahuho/244 was ancestral land and was subdivided amongst the 3 sons of their father; Kaberi Kamenju, Waweru Chege (deceased) herein and Willy Kariuki Chege or;
- c) whether the suit property, Muguga/ Kahuho/244 was purchased by Kaberi Kamenju and Waweru Chege;

These matters cannot be resolved at this initial stage but are outlined to inform the way forward.

DETERMINATION

The Petitioner; niece to the deceased filed and served citations to the children of the deceased. They did not enter appearance and she proceeded with leave of Court to file petition and obtained grant.

The family of the deceased who are beneficiaries of the deceased's estate have objected to the grant as the Petitioner did not disclose their names, as other beneficiaries and did not obtain consents.

The Objectors relied on Section 76 of Law of Succession Act Cap 160;

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.***
- (d) That the person to whom the grant was made has failed, after due notice and without reasonable cause either-***

(i) To apply for confirmation of the grant within one year from the date thereof, or such longer period as the court has ordered or allowed; or

(ii) To proceed diligently with the administration of the estate; or

(iii) To produce to the court, within the time prescribed, any such inventory or account of administration as is required by the provisions of paragraphs (e) and (g) of section 83 or has produced any such inventory or account which is false in any material particular; or

(iv) That the grant has become useless and inoperative through subsequent circumstances.

In the instant case, this Court finds that as per the Chief's letter of 22nd November 2002 named the survivors of the deceased. The list includes the Objectors and rightfully they ought and have sought to revoke the grant. The Petitioner's claim is not borne out by the evidence on record; there are parallel versions of evidence as to the Petitioner's lineage. There are 2 letters from the Chief, one dated 22nd November 2002 that includes the Petitioner as niece to the deceased and another letter from the Chief Muguga of 10th May 2002 which states that after meeting Mary Wanjiru Njogu, Simon Nganga Waweru, Godfrey Kinyanjui Waweru and Joseph Kariuki Waweru and were of the view that Mary Wanjiru Njogu did not prove her claim that her late father had land that was held by the deceased in trust for her. Secondly, she claimed her father was Willy Chege Kariuki who all other deponents claim he was not married and he had no children. The deponents also claim she did not pursue her claim during her father's lifetime and she only raised the issue after the deceased died. The other version is that it is the eldest brother to the deceased Kaberu Kamenju who had no wife and children. The last version is the allegation that the suit property originally Muguga/Kahuho/244 was not ancestral land but land that was purchased by deceased and his distant cousin, not elder brother now and later on was subdivided and the Muguga/Kahuho/676 is what belonged to the deceased.

The Court shall rely on **Section 66 of Law of Succession Act Cap 160** which provides the hierarchy of the beneficiaries and dependants to be appointed administrators, first with consents of all beneficiaries and if not agreed to and consented by the beneficiaries; the Court shall appoint administrators.

In the instant case; the Petitioner sought grant of letters of administration and though the Objectors were served, they claimed they entered appearance through their lawyer. The same is not borne out by the record. Therefore although the Petitioner obtained grant of letters of administration; she does not rank in priority to the Objectors, she did not get their consents to obtain the grant, she did not prove whether she is beneficiary and/or dependant of the deceased's estate in light of the contradicting evidence on record and therefore the process of obtaining the grant was defective and the grant ought and is revoked.

Before resolution of the administration of the deceased's estate, the Objectors have a legitimate claim in appointment of the administrators of the deceased's estate. They are children of the deceased and at this stage the Petitioner has not been able to confirm her relation to the deceased's family. Even if the Petitioner may prove beneficial interest to the deceased's estate; she would only be entitled to a portion and not the whole of the suit property. Therefore there is need and legal basis for appointment of administrators of the deceased's estate and it should in compliance with Section 66 Law of Succession Act Cap 160 that the members of the deceased's immediate family take precedence. The Petitioner's claim as beneficiary and/or dependant of the deceased estate is not borne out by evidence on record as it is convoluted and contradictory and in the absence of testing veracity and credibility of such evidence at least with regard to the members of the family who are alive and well, this Court cannot rely on it in determination of the Petitioner's beneficial interest to the deceased's estate.

DISPOSITION

1. Therefore, the grant issued on 5th October 2004 is revoked and a new grant in the names of ;

1) Godfrey Kinyanjui

2) Nganga Waweru

2. The new administrators shall discharge their statutory mandate as prescribed under Section 83 of the Law of Succession Act cap 160.

3. The administrators shall file summons for confirmation on proposed mode of distribution of the estate .

4. The Former Petitioner Mary Wanjiru Njogu shall confirm her interest to the suit property.

5. Each party to bear own costs.

DELIVERED SIGNED & DATED IN OPEN COURT IN NAIROBI ON 13TH JULY 2017

M. W. MUIGAI

JUDGE

IN THE PRESENCE OF;

.....