



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT CHUKA

SUCCESSION CAUSE NO. 124 OF 2015

(FORMERLY CHUKA SPM SUCC. CAUSE NO. 100 OF 2015)

IN THE MATTER OF THE ESTATE OF M'ARAGWA IRERI (DECEASED)

JESCA CIANJOKA RAGWA.....PETITIONER/RESPONDENT

VERSUS

HELLEN WANJA.....1ST INTERESTED PARTY/APPLICANT

STEPHANINA CIAMBUBA.....2ND INTERESTED PARTY/APPLICANT

LYDIA KAARI.....3RD INTERESTED PARTY/APPLICANT

CHARITY CIAGITARI.....4TH INTERESTED PARTY/APPLICANT

NELISA CIAMBAKA.....5TH INTERESTED PARTY/APPLICANT

NYAWIRA KANGAI.....6TH INTERESTED PARTY/APPLICANT

R U L I N G

1. The cause herein relates to the estate of the late **M' ARAGWA IRERI** (deceased) who died at Embu Hospital on 10th May, 2006 resident in Meru South. After the demise of the deceased, Jesca Cianjoka Ragwa, the surviving widow petitioned for letters of administration herein and was issued with a grant of letters of administration on 20th January, 2016 by this court and later had the grant confirmed on 4th July, 2016.

2. Hellen Wanja, Stephanina Ciambaka, Lydia Kaari, Charity Ciagitari, and Nelisa Ciambaka (1st to 4th Applicants) respectively have now moved this court for revocation of the said grant claiming that they are daughters of the deceased herein but that their mother locked them out of the distribution of the estate and kept them in the dark. Nyawira Kangai (5th Applicant) also claims that she is a creditor to the estate and that she was also kept in the dark by the petitioner in the administration of the estate which comprised the following assets namely:-

(i) Karingani/Mugirirwa/220

(ii) Mariani/Adjudication Section 1686

3. The other ground upon which revocation of grant is sought is that the procedure upon which the grant was sought was defective. The summons for revocation has been supported by the affidavit of the first applicant (Hellen Wanja) sworn on 12th July, 2016 on her behalf and on behalf of the other applicants herein. The applicants have faulted their mother the respondent herein for disinheriting them by proceeding in this cause secretly without involving them (daughters). They have also faulted her for distributing the estate in total disregard to the interests of Nyawira Kangai, Isaiah Mwenda and Rebecca Kainyu in regard to land parcel **No. Mariani/Adjudication Section/1686**.

4. At the hearing of the Summons for Revocation of Grant herein, the 1st applicant insisted that as daughters they were not involved in the petition for Letters of Administration and asked this court to revoke the grant so that distribution can fairly be done afresh so that all the children of the deceased can benefit from a share of the estate arguing that all children must be treated equal regardless of gender.

5. She further testified that the Petitioner/Respondent acting with her son sold **Marian/ Adjudication Section/1686** to one Rebecca Kainyu even before the grant was confirmed and added that Joseph Mwit Njoka was a stranger in the estate and should not have benefitted from distribution of the estate.

6. Jesca Cianjoka Ragwa the Respondent herein in her Replying Affidavit sworn on 10th October, 2016 admitted that the 1st to 5th Applicants are own daughters and that they are all married. She denied having any contractual relationship with Nyawira Kangai (the 6th Applicant) and deponed that the 6th applicant is a stranger and not entitled to the estate.

7. The respondent has further conceded that the daughters have a right to a share of the estate but denied not involving them in the petition for Letters of Administration. She has instead blamed the daughters saying her son one Jeffew Kinyua engaged them at some unspecified stage in the succession proceedings.

8. In her view, the applicants should have instead appealed to the court of appeal if they were dissatisfied with the distribution of the estate arguing that once this court confirmed the grant, it cannot revisit the matter. She justified the mode of distribution adopted claiming that the same reflected the wishes of her late husband (deceased herein). She also faulted the daughters of dragging her to court instead of talking to her at home so that the dispute could be resolved amicably.

9. At the hearing of this application, the Respondent further added that Joseph Mwit Njoka is not a son but a purchaser of part of the estate. She however conceded under cross-examination by Mr. Mugo learned counsel for the applicant, that she sold the portion to the said purchaser prior to the confirmation of the grant. She further agreed that the daughters never got a share of the said proceeds of sale.

10. Joseph Mwit Njoka testified and confirmed that he was a purchaser of part of the estate but distanced himself from the differences of family members. He further added that he provided money that assisted the petitioner in this cause and that though he purchased the property before confirmation of grant he had blessings from the family of the deceased. In her written submissions made through Njeru Ithiga & Co. Advocates, the Respondent has contended that the Summons for Revocation of Grant herein is made in bad faith and as an afterthought. It is contended that Joseph Mwit Njoka is an innocent purchaser for value who should be protected because he has since developed the property. This court has been urged to invoke the principles of equity to protect the buyer.

11. I have considered this application the grounds upon which it has been brought and the written submissions. I have also considered the response through the Replying Affidavit by the Respondent and the evidence adduced at the hearing. I have also considered the written submissions made by the respondent.

It is not denied that the 1st to 5th applicants are daughters of the deceased. It is also not seriously contested that in law they ought to have been involved but were not disclosed when the petition herein

was presented by the Petitioner. I have perused through **P&A 5** form and the Respondent clearly omitted her daughters from the list of the dependants surviving the deceased. This was a clear violation of the provision of **Section 51(g)** of the **Law of Succession Act** which provides that a petition for grant of representation should inter alia in cases of intestacy such as in the instant cause should contain all the names of all the children among other survivors.

12. It is also quite apparent from the record in this cause that a grant was inadvertently issued to the Petitioner without compliance of **Rule 26(1)P%A Rules** which provides as follows:-

"Letters of Administration shall not be granted to any applicant without notice to every other person entitled in the same degree as or in priority to the applicant."

There was no consent in Form **38** or **39** from all the children including the daughters (applicants) herein, that was filed by the Petitioner to demonstrate that the daughters have renounced their inheritance rights by virtue of being married. This court is not convinced that the daughters were informed about the pendency of the petition for Letters of Administration by Jephew Kinyua Samuel or any other person for that matter. This court finds that there was material concealment in the petition for Letters of Administration in this cause and I find no basis at all to justify the confirmation of grant in a mode of distribution so skewed and discriminatory such as in this cause. The interest of all children regardless of sex are well protected by the law and the Constitution which is the supreme law of the land. The provisions of **Article 10** and **27 of Constitution** clearly outlaws any form of discrimination on grounds of sex and the Petitioner/Respondent herein really discriminated against her own daughters just because of their gender and marital status. This is untenable in law and is unacceptable

13. The Respondent has asked this court to invoke the doctrine of equity to protect the interest of the purchaser (**Joseph Mwiti Njoka**). However, the transaction giving rise to his interest is clearly an illegality going by the provisions of **Section 82 (b)** of **Law of Succession Act**. The doctrine of equity cannot override clear provisions of a statute and both the purchaser and the Respondent clearly conceded that the purported sale was done before the grant was confirmed. The same is to that extent void and a nullity in law.

In the premises, this court finds merit in the Summons for Revocation of Grant dated 12th July, 2016. I also find merit in invoking the provisions of **Section 76** of the **Law of Succession Act** which I hereby do and revoke the grant issued on 22nd January, 2016 and confirmed on 4th July, 2016. All transactions including subdivisions effected as a result of the said certificate of confirmation (if any) are hereby nullified and reversed. The estate comprised in land parcel **No.Karingani/Mugirirwa/220** and **Mariani/Adjudication Section /1686** shall revert back to the deceased pending the determination of this cause. Under the provisions of **Section 66** of the **Law of Succession Act** a fresh grant is hereby issued in joint names of Jesca Cianjoka Ragwa and Hellen Wanja. The two shall henceforth jointly administer the estate in accordance with the law and in view of the age of the Respondent I shall grant the Administratrixes liberty to file for confirmation of grant before expiry of the statutory period of six months. I make no order on to costs so each party shall bear own costs.

Dated, signed and delivered at Chuka this 20th day of July, 2017.

R. K. LIMO

JUDGE

20/7/2017

Ruling signed, dated and delivered in the open court in the presence of Mugo for the Applicant, Mutani holding brief for Ithiga for Interested Party and Respondent in person.

R. K. LIMO

JUDGE

20/7/2017