



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
(FAMILY DIVISION)
CAUSE NO. 1885 OF 2002

IN THE ESTATE OF THE LATE MUNIU KIHARA (DECEASED)

REGINA NJERI MUNIU.....1ST APPLICANT
JANE WANJIKU MUNIU.....2ND APPLICANT
MARY WANGUI MUNIU.....3RD APPLICANT
CECILIA NJOKI MUNIU.....4TH APPLICANT

-VERSUS-

WAMBUI MUNIU.....1ST RESPONDENT
MICHAEL NDUNGU MUNIU.....2ND RESPONDENT
SOLOMON KAMAU MUNIU.....3RD RESPONDENT
JAMES MUREITHI MUNIU.....4TH RESPONDENT

JUDGMENT

1. The application for consideration is the Notice of Motion dated 9th October 2013 brought under **Section 76** of the Law of succession Act, Cap 160 and **rule 44 (1)** of the Probate and Administration Rules. The applicants seek **revocation** of the grant issued herein on grounds that;

- i. The proceedings to obtain the grant were defective in substance.
- ii. That the grant was obtained fraudulently by making of false statements and representations and concealment of facts material to the case.
- iii. That the grant was obtained by means of untrue allegations of facts essential in the point of law to justify the grant.
- iv. That the assets of the deceased should have been distributed equally amongst the beneficiaries.

2. The application is supported by the sworn affidavit of Regina Njeri Muniu dated the 9th of October

2013; she avers she is authorized by the 2nd, 3rd and 4th applicants to do so on their behalf. She avers that her late father had the following children **Wambui Muniu, Michael Ndungu Muniu, Solomon Kamau Muniu, Daniel Kungu Muniu, Moses Ngure Muniu, James Mureithi Muniu, Jane Wanjiku Muniu, Mary Wangui Muniu, Cecilia Njoki Muniu and Regina Njeri Muniu** and listed the deceased's properties as follows; **Githunguri/Kanjai/526, Rioki Certificate Number 3317 (1201) Mapa House Shares Certificate No. 5361 and Numberi Farmers Co. Ltd. Certificate No. 13317**. She avers that the applicants were never informed of the confirmation of grant and that the signatures appearing therein were a forgery and the same was meant to disinherit them.

3. The application was opposed **Solomon Kamau Muniu** dated the 18th of November 2013. He avers that the 2nd applicant could not give consent as she is since deceased and that there was no signed authority from the 3rd and 4th applicants giving the 1st applicant to swear the said affidavit in support of the said affidavit. He refutes the applicant's allegations that they were not involved in petitioning for grant of neither letters of administration nor her claim that the applicants consent was forged. He avers that it was agreed from the very beginning that their mother would get land and hold in trust on behalf of the respondents while the sons each got 0.77 hectares each while the widow got 0.9146 hectares. That the widow is not entitled to inheritance as a beneficiary but is only entitled to a life interest on the land.

4. This matter proceeded to full hearing. The applicants Regina Njeri Muniu the 1st applicant and Cecilia Njoki Muniu the 4th applicant testified. Regina reiterated her evidence as deposed in her affidavit; she testified that the administrators were given a temporary grant on the 14/10/09. That though her name was listed she didn't sign the consent and pursuant to the consent L.R Githunguri/ Kanjai/ 526 was subdivided, that none of them the sisters have titles. That there was no meeting before this was done and she is aware that her sisters did not sign the consent and it is her desire that the land be divided equally. On being cross-examined she stated that she had no problem with appointment of the administrators but she did not consent as stated. She disowned the signature shown to her in court and stated that she was not aware of the subdivision of the land until last year, that previously she lived in Lari area but she moved to Githunguri. That she does not reside in her father's plot but in a small plot near Githunguri. That if the titles are left as they are then her brothers will be benefitting from cheating in court. That though the land was subdivided there are no boundaries, nor are there beacons. Pw2 Cecilia the sister of the applicants too stated that she never signed the consent nor did they meet with their brothers over the distribution of the land, neither did she attend the confirmation of the grant. That she stays at the said piece of land and no surveyor has been done nor are there beacons. Her request was that the said piece of land be shared out equally.

5. The 1st Respondent testified that she wants to divide the land the way her deceased husband would have done, that is divide amongst her 9 children and her the 10th one, that by doing so her children will stop fighting. That her husband said she be left with three (3) acres. She mentioned a book used to subdivide the land. In cross-examination she testified that she was told to sign the consent when she was being taken to theater and she placed her thumb print but did not sign. That she did not sign the mutation form nor have they sat down and agreed on the mode of distribution. That the land has not been subdivided as there is no beacon on the land. That her sons want to disinherit her and their sisters. She denied going to court in Githunguri, she denied having a case in the High Court. She testified that Kamau and Muriethi have sold the shamba to persons she does not know and that she has not refused to divide the land amongst her children.

6. The Respondent reiterated his evidence as deposed in his affidavit and testified further that they were together in court for confirmation of grant. That in 2010 their mother allowed them to subdivide the land in 2011, a surveyor was present who subdivide the land amongst the 5 of them and they have their titles, beacons have been placed on the land. That the acreage he has is 0.777 hectares and he has built on his portion. That his brothers too have built on their portions and that they have left the bigger portion to their mother and the sisters. Some of his sisters are married. In cross-examination he denied stealing the titles when DW1 was in hospital. He admitted that his mother dose not sign but uses her thumb print. He maintained that his sisters signed the consent. He admitted selling a portion of the land to someone else

7. Parties filed written submissions which I have carefully read and considered. The respondents submitted that they applied for grant of letters of administration on 20th May 2003 and subsequently applied for confirmation of grant on 1st November 2010 sharing out the deceased's land equally among the sons getting 0.77 hectares while their mother got 0.9146 Ha. That the applicants are daughters of the deceased claiming that they were disinherited. The 1st applicant in her testimony denied knowing about the succession or signing any succession paper or consents while the 1st respondent the widow in her testimony demanded the revocation of the grant and equal distribution of the said land be divided equally among her children. The 3rd respondent in her evidence stated that the applicants were aware of the process. The respondents stated that the mother should share her portion with the applicants and that since the respondents have already acquired titles to their land their titles should not be interfered with.

8. It is not in dispute that the applicants are the sisters to the respondents and daughters of the deceased hence are beneficiaries to the deceased's estate. In the instance case the deceased died intestate and was survived by one wife and 9 children and as such the deceased's estate devolved under **Section 35 of the Law of Succession act, Cap 160**. The said section also entitles the widows a life interest of the deceased's residual estate which extinguishes upon her death or re-marrying another person. **Section 35 (5) further provides that, "subject to the provisions of sections 41 and 42 and subject to any appointment or award made under this section, the whole residue of the net intestate estate shall on the death, or, in the case of a widow, re-marriage, of the surviving spouse, devolve upon the surviving child, if there be only one, or be equally divided among the surviving children."**

9. The respondent indeed admitted that the said land surviving the deceased was shared among the sons and the widow only, with the sons getting 0.77 Hectares while the widow got 0.9146 Hectares. I find that the respondent proposal that the sisters who are also beneficiaries should all get land from their mother's 0.9146 Ha. share is not equitable. All beneficiaries irrespective of gender are entitled to equal share to the deceased's father estate. The 1st and 4th applicants in their testimony denied signing a consent accompanying the application for confirmation of grant. The 1st respondent the deceased's widow seeks to have the land subdivided into 10 portions each for her children and one for herself. She testified that each of the children was to get one (1) acre from the said portion of land while she was to remain with three (3) acres. On her part she also denied signing any papers and only signed when she was being taken to theater and did not know that the same were pertaining distribution of the suit parcel of land as the family members never sat down to decide on mode of distribution and stated that her sons did not tell her that they subdivided the land adding that the same is aimed at disinheriting her daughters and even denied being represented by the respondent's advocate, ever meeting him or even ever attending the High Court for the confirmation of the said grant.

10. Based on the parties' testimony it appears there was no proper consent obtained from all parties for confirmation of the said grant and as such the said is defective. **Section 76** of the Law of Succession Act Cap 160, provides that, **"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;

11. I find that the consent used by the respondents was defective and thus the proceedings therefore leading to the said confirmation were defective in substance. Secondly the respondents obtained the grant fraudulently by making a false statement and concealment from the court something material to the case. I am persuaded that the respondent obtained the said confirmation by means of untrue allegation that they

had secured consent from all the relevant beneficiaries which was not true as such I find that the grant so confirmed was defective and revoke the grant of administration issued to Wambui **Muniu, Michael Ndungu Muniu, Solomon Muniu and James Mureithi Muniu on 20th May 2013 and** subsequently confirmed on **1st November 2010**. Since this is a matter involving family members parties to bear their won costs. It is so ordered.

Dated, signed and delivered this **1st** day of **February 2016**

R. E. OUGO

JUDGE

In the presence of:-

.....**Absent****For the Applicants**

.....**Absent****For the Respondents**

Ms. Charity

Court Clerk