



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT EMBU
SUCCESSION CAUSE NO. 679 OF 2002

In the matter of the Estate of SAMUEL KANYOTI (Deceased)

SICIRIA MUTITU SAMUEL.....ADMINISTRATOR/RESPONDENT

VERSUS

LICIA IRUKI SAMUEL.....OBJECTOR/APPLICANT

R U L I N G

1. This is the application dated 01/04/2014 seeking for orders that the grant issued to Siciria Mutitu Nyaga on 23/11/2006 be revoked and that the applicant Lucia Iruki Samuel be made a joint administrator with the respondent. In the alternative the applicant seeks for orders that she be allotted Ngandori/Kirigi/832 and the respondent/administrator be allotted Ngandori/Kirigi/1048.
2. The gist of this application is that the grant be revoked and the assets be redistributed. The applicant also seek for orders that the administrator Siciria Mutitu be restrained from subdividing and interfering with Ngandori/ Kirigi/832. The application is supported by the affidavit of Lucia Iruki Samuel.
3. In the affidavit, it is stated that the deceased had two wives with the 1st wife having 4 children and the 2nd wife the applicant having nine. The applicant states that the deceased had two parcels of land. The deceased had settled the applicant and her nine children on Ngandori/Kirigi/832 measuring 5 acres while the 1st wife and her children settled on Ngandori/Kirigi/1048 measuring 6.2 acres. It is further stated that one of the administrator's son Richard Nyaga lives with the applicant on the smaller portion on L.R. Ngandori/Kirigi/832.
4. The applicant states that the petitioner/respondent had sued her deceased husband in 1984 over the ownership of Ngandori/Kirigi/1084. The petitioner's son Richard Nyaga was the original administrator but the grant was later revoked in favour of Siciria Mutitu the respondent. The applicant alleges that the administrator is holding the applicant's right over the estate on trust for her family which is contrary to the law.
5. The administrator listed her dead son Njiru Samuel Kanyoti as one of the beneficiaries of the estate which was fraudulent. It is argued that the grant was defective and was obtained fraudulently by concealment of facts material to the case and giving false information. It is further argued that the administrator and her family have never developed their land while the applicant has developed hers.

6. In a replying affidavit the respondent/administrator stated that she got married to the deceased on 10/5/1943. They established their matrimonial home on Ngandori/Kirigi/832. She made developments on the land by planting coffee bushes and macadamia trees which are still on the land. She states that she was forced to relocate to Ngandori/Kirigi/1048 together with her children after her husband started cohabiting with the applicant.

7. According to the respondent LR. No. Ngandori/Kirigi/1048 is unproductive and rocky. She states that she had sued her husband during his lifetime to prevent the sale of Ngandori/Kirigi/1048 to a third party. Her home is in Ngandori/Kirigi/832 and not Ngandori/Kirigi/1048. The applicant applied for grant which was issued in 1995 without the respondents consent and it was revoked on 17/11/2004 after the administrator failed to apply for confirmation of grant for about 9 years. She is currently the administrator of the estate.

8. The respondent states that the grant issued to her on 17/11/2004 and confirmed on 26/11/2006 was done after due process was followed. According to her, the estate was distributed fairly among all the beneficiaries.

9. The parties agreed to dispose of this application by way of written submissions which were filed by the counsels for the parties. Mr. P. N. Mugo for the applicant while Ms. R. Njeru was for the respondent.

10. In her submissions, the applicant restated what was in her affidavit. She added that the respondent should have raised the issue of her land not being fertile during the lifetime of the deceased. Redistribution of the land will not be in the best interest of the family. The respondent should give the appellant land as she has a bigger portion of land yet she has fewer children.

11. The administrator/respondent in her submissions mostly restated what is in her replying affidavit. She added that the new grant that was issued to her and confirmed on 26/11/06 has not been distributed due to numerous applications filed by the objector/applicant. The applicant has not demonstrated sufficient grounds to warrant revocation of grant. The court's ruling of 13/3/14 held that the grant was obtained after following due process. The court distributed the estate fairly. The entire Ngandori/Kirigi/832 is not developed as alleged by the applicant.

12. Section 76 of the Law of Succession Act 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;

(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 order or allow; 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

(e) *that the grant has become useless and inoperative through subsequent circumstances.*

13. The record shows that Richard Nyaga was initially appointed administrator on 29/11/1995 having filed this cause in 1995. He stayed for a period of 9 years without applying for confirmation of grant. For this and other reasons, his mother the respondent Siciria Mutitu applied for revocation of grant. Her application was successful and she was appointed administrator on 17/11/2004 and grant confirmed on 23/11/2006.

14. The applicant is the second wife of the deceased and had filed an application in favour of the respondent so that the two widows could be appointed joint administrators. She sought to introduce the summons for revocation of grant by amending her application dated 11/12/2006. The court disallowed this application.

15. It is evident from the record that the grant in favour of the respondent was confirmed without the applicant raising objection.

16. The mode of distribution made on 26/11/2006 was as follows:-

LR. Ngandori/Kirigi/832 – measuring 6.2 acres

- Siciria Mutitu - 2½ acres
- Lucia Iruki Samuel - 2½ acres

LR. Ngandori/Kirigi/1048 – measuring 5 acres

- Siciria Mutitu - ½ acre
- Lucia Iruki Samuel - ½ acre

17. The applicant in her application dated 11/12/2006 had sought for orders for review, or varying of the mode of distribution made on 23/11/2006 which application was refused in the ruling of Ong'udi, J. delivered on 13/3/2013.

18. The said application was an attempt to revoke the grant issued to the respondent Siciria Mutitu without following the procedure.

19. The applicant did not appeal against the ruling and has taken a long time to apply for revocation of the grant whereas the deceased's assets were distributed about 8 years before filing this application.

20. Since this application clearly seeks for revocation of the grant, I will proceed to consider whether the applicant has satisfied the court that the respondent obtained the grant fraudulently or by concealment of facts material to the case as alleged. It is also alleged that the grant was confirmed without her knowledge of the applicant.

21. In the court proceedings before confirmation, the court ordered that all the beneficiaries of the estate be served with the summons for confirmation of grant which was done. The family of the applicant had appointed an advocate who appeared in court several time in the years 2005 and 2006.

22. The family did not file any protest against confirmation and the court proceeded to confirm the grant.

23. Secondly, it is claimed that the respondent should have joined her co-widow as an administrator. The record is clear that the application of the respondent to be appointed an administrator was not opposed. The applicant was summoned by the court as early as 8/11/2004. Her advocate appeared in court after the summons were served.

24. It is therefore not correct to say that the applicant was not informed of the proceedings which led to the confirmation of the grant. Her failure to file a protest meant that the applicant was agreeable to the

mode of distribution presented by the respondent in which she was catered for.

25. The distribution of the estate was done fairly and equitably in that the two widows of deceased shared the two parcels in equal shares irrespective of the fact that the respondent being the first wife had extensively developed L.R. Ngandori/Kirigi/832 before the applicant married the deceased.

26. The respondent was removed from her matrimonial home to give way for the applicant. She was taken to LR. No. 1048 where she settled. Both parties agree that LR. No. 1048 is rock and unproductive while LR. No. 832 is potential for agriculture. The sharing of the two parcels equally between the two widows of the deceased is fair and just to the family.

27. The applicant alleged that a deceased son Njiru Samuel Kanyoti was named as a beneficiary. This is neither here nor there because the assets were shared equally between the widows so that give their children their respective shares at their own time.

28. It is my finding that the applicant has not satisfied this court that the grant was obtained fraudulently or by concealment of facts material to the case.

29. The application for revocation of grant having failed, it follows that prayer (3) seeking to restrain the respondent also fails.

30. The application is dismissed for lack of merit and with no order as to costs.

DELIVERED, DATED AND SIGNED AT EMBU THIS 4TH DAY OF APRIL 2016.

F. MUCHEMI

J U D G E

In the presence of:-

Mr. Njiru Mbogo for R. Njeru for petitioner

Stephen Muthee Kariuki

Other beneficiaries present