



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT EMBU

SUCCESSION CAUSE NO. 878 OF 2002

IN THE MATTER OF THE ESTATE OF MATAKU MURUAMIU alias MUTUKU MURIAMIU

WILSON NYAGA MUTAKU

SAMUEL NJERU

NANCY MUTITU

MARY MARIGUAPPLICANTS

JANE WANJA

BEATRICE MURUGI

VERSUS

JESICA MUTHONI.....RESPONDENT

RULING

1. This is an application for the revocation or annulment of the confirmed grant issued by this court, which was presided over by Lady Justice Karanja on 25th November 2010. The grounds for revocation are that two beneficiaries namely John Njue Nyaga and Jane Weveti Nyaga are strangers to the estate of the deceased.
2. The applicant tendered oral evidence through Wilson Nyaga (PW 1) who stated that the two strangers above named are not entitled to inherit any part of the estate of the deceased. Furthermore, he also gave evidence that his sisters namely Nancy Mutitu, Beatrice Murugi, Mary Marigu and Mary Mururi are not included as beneficiaries in the estate of the deceased. It is also his evidence that the confirmed grant should be revoked for those two reasons.
3. His further evidence is that the administrator did not involve them in the subdivision of the land. He also gave evidence that two of his sisters are unmarried and are residing in Mombasa and they have also not been given a share of the estate of the deceased.
4. The evidence of PW 1 is supported by that of Mary Marigu Mutaku (PW 2). She similarly wants the grant to be revoked because their other sisters namely herself, Mutitu, Murugi, Wanja and Mururi were not given a share in the estate of the deceased. The second reason she has advanced for the revocation of the grant is that two strangers namely Njue Nyaga and Jane Weveti are not children of their deceased father.
5. Jessica Muthoni Mutaku, the respondent gave evidence in opposition to the evidence given by PW 1 and PW 2. According to DW 2, the respondent sold part of the land to Jane Weveti Nyaga and

- John Njue Njagi in order to get money to pay the hospital bills for her sick child namely Zakaria Ndwiga. It is her evidence that she was forced to do so in order to meet the hospital expenses for this ill child. Under cross-examination, she admitted that Nancy Mutitu, Mary Marigu, Jane Wanja, Beatrice Murugi and Mercy Mururi are her daughters. She has further stated that she has not given three of her daughters any share of the land which forms part of the estate. It is also her evidence that she sold the land to John Njue and Jane Weveti without the consent of the other beneficiaries. According to her, she has not given any title deed to her children because she has not obtained the consent of the Land Control Board to subdivide it. She is agreeable to sit down with her daughters to discuss on the subdivision of two acres of the land and share it among her daughters.
6. The respondent called Ndwiga Gatino, (DW 2) and Ndwiga Philipi (DW 3) as her witnesses. According to DW 2 the respondent had taken her son Zakaria Ndwiga to hospital in respect of which she incurred a bill amounting to over Kshs 100,000/-. She then approached DW 2 who advised her to set aside a piece of the parcel of land to sell in order to get money for paying the hospital bill. He also advised her to set aside another piece to get money to prosecute the succession suit in court. According to this witness, who is a clan elder, daughters are entitled to inherit the estate of their father. It is her evidence that Jane Weveti is not a daughter of the deceased. It is also her evidence that John Njue Njagi is not a son of the deceased.
 7. The evidence of Ndwiga Philipi (DW 3) is that they were approached by DW 1 as a clan member to raise money to pay the hospital bill of Zakaria Ndwiga. Because they did not have money, they advised her to set aside a piece of the land to sell in order to raise the required money. She managed to raise Kshs 120,000/- to be paid towards the hospital bill. There remained a balance of Kshs 20,000/- which she was to use for the succession. It is her evidence that this money was not enough to prosecute the succession cause. She was therefore forced to sell a piece of the land to Richard Nyaga Karingi for Kshs 85,000/- to enable her prosecute the succession cause. It is also his evidence that she proceeded to give a share of the land to those persons who had purchased the land.
 8. In the light of the foregoing evidence, the issues raised in this matter are whether the respondent as the administrator of the estate was entitled to sell the land to the purchasers to prosecute this succession cause and whether she was also entitled to sell part of the land to pay for the hospital bills of one of the beneficiaries of the estate. Additionally, it is also an issue as to who should bear the costs of this application.
 9. I find from the evidence of Jessica Muthoni Mutaku (DW 1) that she was the administrator of the estate. I also find that she sold part of the land to pay for the hospital bills of Zakaria Ndwiga, who is one of her children. Zakaria Ndwiga is a beneficiary of the estate which is being administered by the respondent.
 10. In the circumstances, I find that the selling of part of the land to raise money for his treatment was a duty imposed upon the administrator. This is a factor that the administrator and all the beneficiaries may take into account in the final distribution of the estate in respect of the share of Zakaria Ndwiga. Furthermore, I also find that the sale of the land to raise money to prosecute this succession cause was a proper exercise of the power conferred upon the administrator by the law. The proceeds of the sale were defrayed towards the prosecution of this succession cause. In the circumstances, I find that it was proper for the administrator to sell land to Jane Weveti Nyaga and John Njue Njagi. In addition to prosecuting this succession cause, the money was also required for the survey and subdivision of the land among the beneficiaries. The selling of part of the land of the estate to pay for the hospital bills of Zakaria Ndwiga and to prosecute the instant succession cause including raising money for the survey and subdivision of the land are authorized by **section 83 of the Law of Succession Act (Cap 160) Laws of Kenya**
 11. The purchasers who are not children of the deceased are therefore not ordinary beneficiaries. They are entitled to a share of the land which is equivalent to the purchase money they paid to the administrator.
 12. In view of the foregoing, I find that the purchasers were not strangers to the estate of the deceased. It therefore follows that the objection of the objector is hereby dismissed. As regards costs, this being a family dispute I direct that costs be borne by each party.

RULING DATED, SIGNED and DELIVERED in open court at **EMBU** this **12th** day of **APRIL**

2016

In the presence of Mr Njiru for the Applicants and in the presence of the Respondent

Court clerk Njue

J.M. BWONWONGA

JUDGE

12.04.16