



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT EMBU

SUCCESSION CAUSE NO. 249 OF 2013

FORMERLY EMBU SUCC NO. 76 OF 1993

IN THE MATTER OF THE ESTATE OF MARTHA GICHUKU NGARI (DECEASED)

ALLAN NJIRU JOHANAPETITIONER

VERSUS

ROSEMARY NJURA NYAGA.....PROTESTOR

RULING

1. Rosemary Njura Nyaga filed this protest seeking to revoke the confirmed grant issued in favor of the petitioner as the sole beneficiary of land reference No. Manyatta/ T. 28. According to her, the petitioner did not disclose to the court that there were other three potential beneficiaries. Due to that concealment the petitioner obtained the confirmed grant of the suit land.

2. The evidence of Rosemary Njura Nyaga (PW1) is that the petitioner is the brother of her late husband. She testified that the Petitioner secretly obtained the confirmed grant in his favor to the exclusion of three other beneficiaries. PW1 adopted her supporting affidavit bearing the court date stamp of 24th June, 2013, and her replying affidavit to that of Allan Njiru Jonathan as her evidence. It is also her evidence that the petitioner was a younger brother of her late husband Hosea Nyaga. In addition to her husband and the petitioner, there were two brothers in that family both of whom are now late. She also testified that Elisha Kiragu was also a co-owner of the suit land namely Manyatta/No. 28 . PW 1 testified that she told the wives of Elisha Kiragu and Moses Nyaga to join her in filing and prosecuting a succession cause in respect of the suit land. They refused citing lack of money as the reason for refusal. As a result she went a head and filed a succession cause in respect of the suit land.

3. According to her affidavit evidence, the suit land was jointly owned by her late husband, Elisha Kiragu (now late) and the petitioner. She also testified that the petitioner secretly filed a succession cause without informing her. She only came to be aware of the confirmed grant in favour of the petitioner after she took her own confirmed grant, which she obtained in Succession Cause No. 327 of 2010 to the County Council of Embu for implementation. According to her, the clerk of Embu County Council informed her that the suit land had already been registered in the name of the petitioner. She further testified that the grant in favour of the petitioner was obtained though fraudulent and concealment of material facts.

4. The evidence of the protestor is supported by Lucy Kiragu (PW2). According to PW2 the suit land had buildings that were constructed thereon in 1954 by Hosea Nyaga, Jonathan Mutura and Elisha Kiragu. It is also her further evidence that she is also entitled to a share of the suit land. She further testified that the petitioner refused completely to discuss with her the issue of the suit land. Furthermore she testified that

the petitioner filed a case before the Manyatta Market Committee to evict her from the suit land. That committee refused to order for her eviction. As a result of that order, she advised PW1 to file a case so that she could get a share of the suit land.

5. The protestor called her son, Joseph Muchiri Nyaga (PW 3) as her a witness. PW 3 stated the suit land reference No. Manyatta Market/T.28 belongs to his father Hosea Nyaga and his brother. It was his evidence that they filed a succession case in this court and were issued with a confirmation of grant dated 6th December, 2012 issued by Judge Ong'udi. When they took this grant for implementation to Embu County Council, they were told that the petitioner had taken there another confirmed grant which enabled him to be registered as the owner. The council gave him a copy of that grant being a grant issued by the court of the Senior Resident Court at Embu in Succession Cause No. 76 of 1993. According to that grant the petitioner was entitled to inherit the whole parcel of the suit land. He also discovered that the petitioner did not disclose to the succession court that there were other beneficiaries.

6. It is also his further evidence that Embu County Council had written to his late father asking him to disclose his partners in the suit land. That letter of Embu County Council is dated 21st February, 1973. After carrying out its investigation, the council found that the suit land was owned by four persons according to their letter of 2nd February, 2010. As a result of this information from the council, they filed this protest to revoke the confirmed grant issued to the petitioner.

7. These proceedings were conducted in the absence of the petitioner. I was satisfied that the petitioner had notice of hearing of this protest. Furthermore I found that he had adequate notice of the hearing notice. It is for these reasons that the proceedings proceeded in his absence.

8. I find from the protestor's evidence that the petitioner did not disclose to the court that there were other beneficiaries of the suit land, when he filed the succession cause in the Magistrates' Court in Embu in Succession Cause No. 76 of 1993. According to the letter of Embu County Council dated 2nd February 2010, the suit land was jointly owned by Hosea Nyaga, Elisha Kiragu, Moses Nyaga and Allan Njiru(the petitioner). I believe the evidence of the protestor and that of her her witnesses that the petitioner did not disclose this material fact to the succession court. In the circumstances, I find that the confirmed grant in favor of the petitioner was obtained by a fraudulent false statement namely that the petitioner was the sole beneficiary in respect of the suit land.

9. Having considered the totality of the evidence produced, I find that the suit land was jointly owned by the husband of the protestor, her two brothers in law who are now dead and the petitioner. In the circumstances, the confirmed grant issued to the petitioner in Succession Cause No. 76 of 1993 is hereby revoked in terms of section 76 (b) of the Succession Act (Cap 160) Laws of Kenya. I find that Allan Njiru Johana and the beneficiaries of the estates of Hosea Nyaga, Elisha Kiragu and Moses Nyaga, are entitled to a share of the suit land namely, Land reference No. Manyatta Market/T.28.

9. This is a family dispute and for that reason there will be no order as to costs.

RULING DATED, SIGNED and DELIVERED in open court at **EMBU** this 12th day of May **2016**

In the presence of the both the protestor and the petitioner

Court clerk Njue.

J.M. BWONWONGA

JUDGE

12/05/2016