



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT EMBU

MISC. APPLICATION NO. 248 OF 2012

(FORMERLY SUCCESSION CAUSE NO. 133 OF 1989 EMBU)

**IN THE MATTER OF THE ESTATE OF *JONATHAN NJERU Alias JONATHAN NJERU
KAMURUANA (DECEASED)***

JOYCE MBEERE.....APPLICANT

VERSUS

JAIRUS NJAGI JONATHAN.....ADMINISTRATOR/RESPONDENT

RULING

1. This is the application for revocation of grant dated 30/10/2012 brought by Joyce Mbeere Michael. The application is supported by the affidavit of Joyce Mbeere Michael.
2. In the supporting affidavit the applicant states that she is a daughter in law of the deceased. Her husband is the late son of the deceased namely Michael Kinyua Njeru. The petitioner Jairus Njagi Jonathan is also a son of the deceased. She alleges he filed the succession without informing the applicant. The petitioner acted fraudulently and concealed some important information during the confirmation of grant. He gave himself a bigger share as opposed to that of the applicant.
3. The respondent stated that the deceased was survived by eight children. During his lifetime, the deceased had expressed how he wished his estate to be distributed. Johana Mwaniki, Zakayo Mutua and Peter Njiru had already been given land during the lifetime of the deceased and did not therefore inherit from the estate.
4. The applicant's late husband Michael Kinyua had also been given land during the lifetime of the deceased but the applicant sold it after her husband died. The deceased decided that the applicant should inherit 1.5 acres out of Kagaari/Kigaa/86.
5. The respondent was to inherit the remaining 5 acres out of the said parcel because he had a responsibility of helping his three sisters who did not inherit anything. The respondent said he and his sisters disposed off parcel Kangaari/Kigaa/T.65 as that was the intention of the deceased. The applicant was a beneficiary of three other plots inherited by the deceased's sons and even participated in the transactions. The applicant has the title deed of her portion of Kangaari/Kigaa/86 being her inheritance in this case and never raised any objection. The grant was confirmed over 20 years ago and the applicant has never raised any objection.

6. The applicant, PW1, testified that she is the wife of the late son of the deceased with whom they had nine children. The petitioner did not inform her that he was filing the succession cause and only learnt about it when the surveyor visited on the land. She was only given 1½ acres while the petitioner took 5 acres. It is her case that the land should have been shared equally between the two sons of the deceased i.e the petitioner and the applicant as a representative of the late Michael. There was non-disclosure of material facts and this is a good ground for revocation of the grant.

7. PW2 the applicant's witness testified that she lives in the same neighborhood with the family of the deceased and he knows them well. The applicant lives on the land of the deceased and is entitled to her late husband's share which she was denied.

8. The respondent DW1 testified that the deceased had eight children including himself and the applicant's husband one Michael Kinyua. It is correct that the applicant was married to their late brother. The deceased had shown the late Michael about 1½ acres to build on and cultivate and that is where his family resides currently.

9. The witness further testified that the other two sons of the deceased had been allocated land elsewhere by the deceased in his lifetime. DW1 is the last born and according to the Embu traditions he should take his parents home. That was also the deceased's wish. The succession was filed in 1990 after all the family members including the applicant who used to attend court during the succession proceedings.

10. It is not in dispute that the land was subdivided in the presence of the applicant. The respondent took the portion with Eucalyptus and gravellia trees and the trees were shared among the three brothers. The applicant and her son were present in a meeting called by the deceased where she was given 1 ½ acres and the respondent five acres which he was to hold in trust for his sister.

11. The respondent said that the applicant's husband had been given another plot at Kigaa which he sold. The deceased said that plot number Kigaa/T.65 would remain in his name. It was inherited by the deceased's three sons who sold it to their uncle Kitheka. The proceeds were used to construct rental units of which the rent is usually shared by the beneficiaries of the deceased including the applicant. The succession cause was filed and concluded with the knowledge of the applicant.

12. DW2 was the respondent's witness. He testified that he is a son of the deceased and that the applicant is his sister in law. He said that the deceased distributed the estate in presence of the applicant during his lifetime. It was agreed that the Kigaa plot would be shared between the applicant and the respondent. The applicant was to get 1½ acres and the respondent the rest together with the deceased's home.

13. DW1 further stated that the applicant was present in a family meeting where the respondent was appointed as the representative of the estate and she consented to the distribution of the estate. The witness further stated that the plot at Runyenjes is rented out and all the heirs including the applicant benefit from the proceeds. He said that the grant should not be revoked as everyone was involved in the succession proceedings.

14. The respondent filed submissions while the applicant did not do so.

15. It was submitted by the respondent that the applicant has not satisfied the requirements under Section 76 of the Law of Succession Act to warrant revocation of grant. The applicant was present in court on 6/5/1990 where she consented to the grant being issued to the respondent. The applicant was also present in court on 22/8/1990 when the grant was confirmed.

16. The applicant was registered as the proprietor of parcel Kagaari/Kigaa/4089 and executed transmission documents for the said transfer and cannot therefore claim she was unaware of the whole process. The applicant was also a beneficiary of other properties forming part of the deceased's estate. There has been inordinate delay of about 11 years in filing the application for revocation.

17. The grounds for revocation of grant are provided for under Section 76 of the Law of Succession Act

which provides:-

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.

18. These conditions were cited in the case of **JOYCE NGIMA NJERU & ANOTHER VS ANN WAMBETI NJUE [2012] eKLR.**

19. This grant was confirmed in 1990 which was about 22 years gone at the time this application was filed. The delay bringing the application has not been explained to justify the rather late move on the applicant. The application must have been an afterthought in my considered opinion.

20. The applicant testified that the grant was obtained fraudulently and that she was not aware of succession proceedings. The respondent states that the applicant was in the meeting where it was decided that the respondent files the succession proceedings. The court record shows that the respondent attended court when the applicant was issued with the letters of administration intestate and on the date the grant was confirmed.

21. The proceedings of 6/5/1990 show that both parties attended court in this application when the court issued the letters of administration. The applicant was present and the court that she did not object.

22. On 22/8/1990 when the matter was coming up for confirmation of grant, the applicant was present and informed court that she agreed with the mode of distribution.

23. The applicant's assertion that she was never aware of the succession proceedings relating to the estate of the deceased is therefore not true. Her arguments are not supported by the record of the court.

24. The truth is that she was aware of the proceedings having attended court during the two crucial dates when major decisions were made in this cause as explained herein.

25. In the supporting affidavit, the applicant did not disclose her attendances in court which portrays her as dishonest. She agreed with the mode of distribution of the estate on 22/08/1990. She said: *"I agree with the distribution"*. This conduct renders incredible the evidence of the applicant given on oath.

26. The applicant has failed to prove any of the grounds set out in the relevant law.

27. I find no merit in this application and dismiss it accordingly.

28. Each party to meet its own costs.

29. It is hereby so ordered.

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

F. MUCHEMI

JUDGE

In the presence of:-

Ms. Muriuki for R. Njeru for Respondent

Applicant in person