



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

FAMILY DIVISION

SUCCESSION CAUSE NO. 1710 OF 2010

**IN THE MATTER OF THE ESTATE OF ANNA GATHONI ZACHARIA NGANGA alias
ANNAH MUTHONI**

RULING

1. Anna Gathoni Zachariah Nganga also known Anna Muthoni died on the 13th July 1999. John Huru Ngewa her fourth son filed a petition for a Letter of Administration intestate in Succession Cause no. 140 of 2009 in the Chief Magistrate's Court at Thika . On the 23rd of December 2009 the Chief Magistrate's Court confirmed the grant issued to John Huru Ngewa on the 4th May 2009. On the 23rd of February 2010 James Wangema filed a Caveat and on the 12th of March 2010 he filed an application seeking to stay the execution of the court order made on the 23rd of December 2009. This application was heard inter partes and the same was dismissed on the 26th of May 2010.

2. On the 26th of August 2010 an application was filed by Simon Ndungu Wangema, Philip Ndungu Wangema and James Wangema seeking orders to revoke the grant that was confirmed on the 23rd November 2010. I note that the wrong month was indicated in the application. The grounds in support of the application are as follows that;

- a) The proceedings to obtain the grant were defective in substance
- b) That the grant was obtained fraudulently by making a false statement or by the concealment from the court of something material to the estate.
- c) That prior to the confirmation of grant no deliberations as to the mode of distribution of the estate was done.

3. The application is supported by the affidavit of the 3 applicants and they aver as follows that; they are objectors herein and are some of the sons of the late Anne Gathoni Zacharia alias Annah Muthoni who died on 13th July 1999. That the grant of letters of administration intestate for the estate of the deceased was made to John Huru Ngewa. That the said grant was irregularly obtained as the proceedings to obtain the said grant were fraudulent by making of false statement and by concealment from court of the facts material to the cause. That prior to the confirmation of grant no deliberation as to the mode of distribution of the estate of the deceased were done. That together with other brothers they did not execute or sign the consent form for the confirmation of grant but the said John Huru Ngewa forged their signatures on the consent form. That the said John Huru Ngewa presented a mode of distribution of the deceased's properties namely land parcel **Chania/Kanyoni/335** contrary to wishes of other beneficiaries and has now been building hostility amongst family members. That the rationale behind the mode of distribution was that the land parcel number Chania/Kanyoni/335 was subdivided on 11th March 1994 as follows;

James Wangewa, Philip Ndungu, Simon Ndungu, John Huru, Paul Mitung'u each was given 2.56 Acres whereas Lucy Nyambura was given 2.00 acres. That contrary to what the administrator presented to the court the correct mode of distributions for land parcel No. Chania/Kanyoni/335 should have been as hereunder;

- a. **James Wangewa** should have got 3.31 acres instead of 2.64 acres
- b. Phillip Ndungu Wangewa should have got 2.56 acres instead of 2.5 acres.
- c. Simeon Ndungu Wangewa should have got 2.56 acres instead of 2.46 acres.
- d. John Hura Ngewa should have got 2.31 acres instead of 2.4 acres
- e. Lucy Nyambura Nganga should have got 1.75 acres instead of 2.4 acres.
- f. Paul Mitungu Wangewa should have got 2.31 acres instead of 2.4 acres
- g. That John Huru, Paul Mitungu and Lucy Nyambura

4. That John Huru, Paul Mitungu and Lucy Nyambura each sold 0.25 acres to James Wangewa and hence his total acreage increased up to 3.31 acres. That the physical boundaries on the ground reflect their mode of distribution and each beneficiary is occupying his/or portion as indicated herein and the same situation has existed ever since the presence of deceased. That in view of the aforesaid sequence of event and errors and the behavior of the said John Huru Ngewa it would be inappropriate and wrong to continue having him as an administrator of the estate of the deceased herein as he had deprived the beneficiaries of their rightful inheritance in respect of land parcel Chania/Kanyoni/335.

5. 26/8/2010 is fatally defective as it neither discloses in what manner any of the provisions of section 76 of the Law of Succession Act were violated nor does it state the relevant provisions of law the orders therein are sought. That the proceedings to obtain the grant were regular and procedural and the beneficiaries executed consent to the mode distribution. That the applicants have committed perjury by alleging that they did not execute the consent. That he has been bringing the family members together and building peaceful co-existence but the applicants have been assaulting him for no justifiable cause. That the proper and agreed mode of distribution is as per the certificate of confirmation of grant and the applicants are bound by the consent they executed. That the deceased during her lifetime Kanyoni/335 equally among the six beneficiaries. That each beneficiary got 2.46 acres except Philip Ndungu Wangewa who got 2.5 acres since his portion has the graveyard. That Lucy Nyambura Ng'ang'a, Paul Mitungu Ngewa and him sold each a portion measuring 0.06 acres and not 0.25 acres as alleged, to James Wangewa in 1994 for a sum of Kshs.75,000, however, but he was only paid a sum of Kshs.68,000/- and that is why he inherited 2.64 acres. That the said transaction is void and null as they did not have legal capacity to sell the said portions and further the land board control's consent was not obtained within (6) months as required by law. That the alleged physical boundaries are temporary and informal and they do not reflect the actual acreage for each beneficiary and they have no bearing to the mode of distribution of the estate of the deceased. That the summons dated 26/8/2010 is an afterthought perpetuated by greed. That the applicants are guilty of material non-disclosure for failing to disclose that they have filed an appeal no. 8 of 2010.

6. On the 29th of May 2012 **Philip Ndungu Wangewa** a son of the deceased and a beneficiary of the estate and one of the applicants filed an affidavit renouncing the allegations contained in the joint affidavit sworn on 26/8/2010. He avers that although he signed the affidavit, the contents thereof were not explained to him. That he confirms that they signed the consent to confirmation of grant and agreed on the mode of distribution and he is satisfied with his share. He urged the court not to revoke the grant as it will not serve any purpose.

7. **Paul Mitungu Wangewa** a son of the deceased too filed an affidavit refuting the allegations made by the applicant James . He deponed that he reiterates all the averments contained in the replying

affidavit sworn by the administrator of estate, John Huru Ngewa on 30th December 2010. That all the family members discussed and agreed on the mode of distribution and they mandated the administrator to prepare the summons for confirmation to grant and consent thereto. That the administrator prepared the above mentioned document and subsequently they visited the firm of Wanyoike & Macharia Advocates on 09/11/2009. That he remember very well that the advocate read to us and explained the meaning of each document and they confirmed that they had agreed on the propose mode of distribution. That they all executed the consent and the advocate also signed and stamped it. That wthey they appeared in court on 23/12/2009 they again confirmed to the court that they had consented to the mode of distribution and executed consent.

8. Submission were filed by the parties I have read and considered them together with the affidavits filed and the law. It is mandatory for the applicant to prove the allegation made in his summons that the grant was irregularly and fraudulently obtained. I have noted that his two co applicants' his brother Paul and Philip have refuted what is in their joint affidavit. The objector's brother state that they agreed as a family and even appeared in court. Forgery has not been proved by James the objector nor has he proved that there was fraud by making false statement and concealing from the court something material. It's not in dispute that the deceased shared out the land before she died. What appears to be the problem is the mode of distribution of the land which in my view does not warrant the revocation of the grant as sought by the objector. The parties can resolve the issues between them it is not in dispute that they occupy the parcels of land as was shared out by the deceased. The objector has thus failed to persuade this court that the grant should be revoked, the application dated the 26th of August 2010 is dismissed. Since this is a family matter, each party to bear its own costs. It is so ordered.

Dated signed and delivered this 7th day of **September 2016**

R.E.OUGO

JUDGE

In the presence of :

.....**For the Objector**

.....**For the Respondent**

M/s Charity Court Clerk