



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

MISC. APPLICATION NO. 210 OF 2014

IN THE MATTER OF THE ESTATE OF NJUE WA KAMUNDI(DECEASED)

MARYSTELLA GAKII MUTEGI.....PETITIONER

VERSUS

MERCY KAGIGE KAMUNDE.....1ST APPLICANT

ELIPHELET MICHENI KAMUNDE.....2ND APPLICANT

ELIPHAS MICHENI KAMUNDI.....3RD APPLICANT

ERASTUS NJAGI KAMUNDI.....4TH APPLICANT

DUNSTAN KARIUKI KAMUNDI.....5TH APPLICANT

KELLEN MUKWARAMA KAMUNDI.....6TH APPLICANT

DR. FREDRICK NJERU KAMUNDI.....7TH APPLICANT

DINAH WANJA KAMUNDI.....8TH APPLICANT

KIMATHI KAMUNDI.....9TH APPLICANT

RULING

1. The 1st to 9th applicants through an application dated 10th July, 2014 pursuant to Section 76(b) and (ii), Section 47 and 48 of the Law of Succession Act, Rule 73 and 49 of the Probate and Administration Rules and Section 1A, 1B, and 3, 3A of the Civil Procedure Act sought several orders; the main one being revocation and/or annulment of the grant of representation issued to the petitioner/respondent on 31st December, 2013 and cancellation of any registration and/or title deeds, issued thereafter and have Karingani/Ndagani/8426,8425,5994,334,7113 and 8387 revert into the names of the deceased until this Succession cause is fully heard and determined.
2. The application is premised on the grounds on the face of the application being inter alia; that the proceedings were defective in substance; that grant was obtained fraudulently by making false statement or by concealment from court of something material to the case; that grant was obtained

by means of an untrue allegation of facts essential in point of law to justify the grant; that at the grant given to the deceased is worth over Kshs.10,000,000/; that the petitioner intentionally avoided giving the names of the deceased's son Eliud Murithi Njue now aged 16 years as a beneficiary to the deceased estate; and that the acts of the petitioner has disenfranchised the interests of the applicants and other beneficiaries.

3. The 1st applicant, mother to the deceased in her affidavit dated 10th July, 2014 in support of this application on behalf of herself and all other applicants, has listed the deceased dependants to include the petitioner, herself and two sons of the deceased Jamhuri Gitonga Njue and Eliud Murithi Njue; she has listed the deceased property which include 7 parcels of lands, 2 vehicles, death gratuity, cash deposited in 5 banks and Safaricom shares.
4. The petitioner appointed the firm of M/S A. G. Riungu, Advocate to represent her in this application through notice of appointment dated 16th July, 2014. The petitioner filed a replying affidavit dated 22nd July, 2014 contending that she does not know Eliud Murithi Njue and if he is an heir to the deceased estate she would be willing to have him brought on board and that she be granted custody of Eliud Murithi Njue if a minor. She further contended that the applicants are not beneficiaries to the deceased estate as none of them was being maintained by the deceased immediately prior to his death. The petitioner further urged the petition cause at Chuka is finalized and there is nothing pending attaching grant of letters of administration intestate and certificate of confirmation of grant.
5. The petitioner in her affidavit admit that the assets of the deceased included Karangani/Ndagani/7113,8425,5994,5334,8387 and 8426 and attached to her affidavit official searches.
6. That during pre-trial conferencing court directed the summons for revocation of grant be determined by way of viva voce evidence and issue for determination be limited to the value of the deceased estate.
7. The 1st applicant gave evidence and called one witness whereas the petitioner opted not to give evidence and called no witness.
8. The evidence of OW1 Mercy Kagige, the 1st applicant is that she is mother to the deceased; who had two wives. That the deceased had one child Eliud Murithi. She gave the deceased properties to include parcels of lands at Karingani/Ndagani/334,7113,8425,8426,8387,4509 and a gratuity of Kshs.3,000,000/- which was paid to the petitioner. She gave the current value of the deceased lands at kshs.2,000,000/-. She contended the deceased had bank accounts with various banks stating in one account the deceased had a deposit of Kshs.1,191,174//22 whereas in another he had 773,296/85 as of March, 2014. She also stated that the deceased had vehicles whose value she gave at Kshs.10,000,000/- in conclusion OW1 gave the net value of the deceased estate at Kshs.50,000,000/-.
9. OW2, Branch Manager with Postbank Chuka testified that the deceased herein had a Bank Account with Post Bank A/C No. KCHU BSA 00228980 which A/C before the deceased death as of 27/6/2012 had a balance of Kshs.128,200/- but the same was closed on 1/4/2014 when the court confirmed grant in favour of the petitioner vide Chuka Succ No. 243 of 2012.
10. Upon close of the applicant's case Mr. A. G. Riungu learned Counsel for the petitioner indicated that they did not intend to call any witness but relied on petitioner's affidavit and all annexures thereto.
11. The court has carefully considered the summons for revocation, affidavit in support, replying affidavit, applicant's oral evidence and Counsel Submissions. The only issue as agreed in this summons is what is the value of the deceased estate and whether the Chief Magistrate court at

Chuka had requisite jurisdiction to deal with the Succession Cause before it.

12. I have perused the court file and have noted Form P& A5 lists the deceased assets as averred by the applicants being Death Gratuity, Bank A/C in five (5) Banks, Safaricom shares, six (6) parcels of land at Karingani/Ndagani, M/V Reg. No. KBP 853D Toyota, and KAG 022Q Nissan Pickup whose total value is given at Kshs.100,000/-
13. The 1st applicant estimated the net value of the deceased estate at Kshs.50,000,000/-. OW2 testified the deceased account with Post Bank at the time of his death had Kshs.128,200. The petitioner did not challenge the value of the deceased estate as alluded to by the 1st applicant nor did she challenge the deceased Bank Account. Even in her replying affidavit she has not done so. The petitioner's Counsel in his submissions urged that Chief Magistrates is supposed to know his/her pecuniary jurisdiction in Succession Cause matters and faulted the Chief Magistrate for issuing both the grant and confirmed grant on the same day notwithstanding the court was aware of the gross value of the deceased estate.
14. I have carefully considered the description of the deceased properties, his bank accounts, the types of vehicles the deceased has had, and/or have taken in Judicial Notice that lands at Meru area, and especially at Karingani/Ndagani near Chuka town are not cheap and no such parcels of lands, can be worthy less than Kshs.100,000/-. In addition to that no moving vehicles of whatever description can be worthy less than Kshs.100,000/-. That though all bank accounts have not been produced the deposit in the account held with Post Bank Ltd was at the time of the deceased having more than Kshs.100,000/-. That the court had copies of title deeds of lands of the deceased it should have noted that the value of the said lands could not have been less than Kshs.100,000/.
15. The court should have before it proceeded to confirm grant have sought to be furnished with the balances in respective of various bank accounts of the deceased and ascertain the amount held in the said accounts.
16. Having considered all the pleadings and the uncontroverted evidence by the applicants I am satisfied that the value of the deceased estate exceeded Kshs.100,000/-. That by virtue of Section 47 of the Law of Succession Act which limits Magistrate's Jurisdiction to Kshs.100,000/- in Succession cause matters the Chief Magistrate at Chuka lacked requisite jurisdiction to entertain and determine the Succession Cause before it.
17. The petitioner who filed the succession cause at Chuka Law Courts knew and ought to have known that the value of the deceased estate exceeded Kshs.100,000/- she knew the gratuity was above Kshs.100,000/- yet when the matter came up for hearing before this court she tried all she could to delay its disposal by insisting on oral evidence yet when her time came up to give evidence, she declined to give any evidence of course, that was within her rights, but the court is concerned with the application of delaying tactics by parties with intent to frustrate others and abuse the court process.
18. The upshot is that the applicants application succeeds and I proceed to make the following orders:-
 - i. ***That temporary grant and confirmed grant issued on 31st December, 2013 be and is hereby annulled.***
 - ii. ***All transfers/registration or title deeds, issued after 31st December, 2013 in respect of land parcel Karingani/Ndagani/8426,8425,5994,334,7113, and 8387 are cancelled and same ordered to revert into the names of the deceased Njue Wa Kamundi till this Succession Cause is heard and determined.***
 - iii. ***That the petitioner Marystella Gakii Mutegi and Mercy Kagige Kamundi are appointed joint Administratixes in this cause and temporary grant of letters of Administration intestate do issue in their joint names forthwith.***
 - iv. ***That all deceased Bank Accounts, Safari Shares are ordered frozen and/or stopped from being operated till the Succession Cause is fully determined.***

- v. *The petitioner is restrained from alienating, disposing or in anyway dealing with the deceased M/V KBP 853 D and KAG 022Q or in any adverse manner till this succession cause is fully determined.*
- vi. *The petitioner to pay the 1st applicant costs of this application to be agreed or taxed.*

DATED, SIGNED AND DELIVERED AT MERU THIS 12TH DAY OF MARCH, 2015.

J. A. MAKAU

JUDGE

DELIVERED IN OPEN COURT IN PRESENCE OF:

1. Mr. D. J. Mbaya for applicant
2. A. G. Riungu for the petitioner
3. C/clerk Penina/Mwenda

J. A. MAKAU

JUDGE