



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

SUCCESSION CAUSE NO. 614 B OF 2009

**IN THE MATTER OF THE ESTATE OF THE LATE FRANCIS MUNGAI KANGETHE
(DECEASED)**

MARY WAIRIMU.....PETITIONER/APPLICANT

VERSUS

DANIEL KAMITI MUNGAI.....OBJECTOR/RESPONDENT

RULING

1. Before this court are two applications one by the Petitioner dated the 9th June, 2014 and the other by the Objector dated the 3rd March 2014. By consent of the parties, the two applications are to be canvassed together, by way of written submissions.
- 2.
3. The application dated 3rd March, 2014 by the Objector seeks orders to revoke and or annul the confirmed grant of letters of administration and certificate of confirmation issued by the court on the 13th November, 2014. It is brought under the provisions of Section 76(a)(b) of the Law of Succession Act and Rule 44 and 73 of the Probate and Administration Rules. The main reason advanced in support of the application is that the proceedings to confirm the grant were defective in substance, and is supported by the affidavit of Daniel Kamiti Mungai the Applicant, and one of the sons of the deceased.
- 4.
5. The second application dated the 9th June 2014 is brought by the Petitioner, the widow of the deceased and seeks an order that the Deputy Registrar of this court do execute all the necessary documents to facilitate distribution and winding up of the estate in place of Daniel Kamiti Mungai the Respondent herein. It is brought under Section 47 of the Law of Succession Act and rule 73 of the Probate & Administration Rules, on the grounds that the Respondent has totally refused to cooperate with the Applicant to finalise the distribution of the estate as ordered by the court in its ruling on the objection proceedings dated the 13th November, 2013.
- 6.
7. A brief background leading to the two applications is that the Petitioner together with the Objector are co-administrators of the estate of Francis Mungai Kangethe who died on the 5th March, 2009. The Applicant is the Petitioner and widow of the deceased who was left behind with their 8 children, six sons and two daughters. The Respondent/Objector is the eldest son one of the six sons, of the deceased.
- 8.
9. On the 8th June, 2011 a Grant of Letters of Administration Intestate were granted to both the Petitioner and the Respondent/Objector as co-administrators of the estate after the court had determined the objection proceedings. On the 3rd October 2013, through the parties able Advocates, a consent was recorded to the effect that to determine the mode of distribution of the

estate, the court would rely on the affidavits filed by either party for purposes of distribution of the deceased's estate. The Petitioner filed two affidavits dated 19th March, 2012 and 12th June, 2013 while the Objector filed an affidavit dated 2nd May, 2013. The Petitioner and all the beneficiaries, save the Objector agreed on the mode of distribution and filed a consent to that effect.

10.

11. The Objector Daniel Kamiti Mungai in his affidavit proposed that all the beneficiaries be given equal shares of 9.1 acres each out of plot No. Nya/Passenga/64 after hiving out 3 acres for Michuki family. He however proposed that his portion of 9.1 acres should be where the matrimonial home is situated. The court considered that since the widow was alive, her portion of 9.1 acres would be where the matrimonial home is situated, and that she would choose her neighbour due to the strained relationship with the Objector. The widow however got a bigger share of 20 acres, by way of her other children, except the Objector, donating part of their 9.1 acres to her, to make the 20 acres thus each retaining 7.5 acres. The Objector retained his 9.1 acres, and all parties being in agreement, including the Objector, the court proceeded to confirm the grant and a Certificate of Confirmation of grant issued the same day, the 13th November 2013. This in effect determined in finality, the objection proceedings filed by the Objector.

12.

13. As far as this court can discern, there is no appeal against the courts ruling and determination or an order to vary or review the terms and mode of distribution as contained in the ruling issued on the 13th November, 2013.

14.

15. The present application by the Objector dated 3rd March, 2014 seeks to revoke and or annul the Certificate of Confirmation of grant dated the 13th November, 2013. As stated earlier, it is premised on one ground that the proceedings to confirm the grant were defective.

16.

17. At this point, I wish to point out that in these proceedings leading to the confirmation of the grant, the Objector was ably represented by his able Advocates, and he willfully and knowingly fully participated in the proceedings. The court considered the Objectors affidavit in support of his proposed distribution where he proposed that all the beneficiaries should get equal shares of the land, and indeed the court proceeded to give each beneficiary 9.1 acres, including the applicant, with the variation indicated above where the Petitioner ended up with 20 acres.

18.

10. The Applicant's main complaint is that his mother, the Petitioner was awarded 20 acres absolutely, that she is not entitled to the said land absolutely as she holds the same as a life interest and in trust for the children including himself.

11. I have considered the two applications, the supporting affidavits and submissions by both counsel for the Petitioner and the Objector/Applicant.

12. On the application dated on the 3rd March, 2014 by the Objectors.

I have already pronounced myself that the ruling on the distribution of the estate and confirmation of the grant on the 13th November, 2013 has not been appealed from. To interrogate and or fill up any gaps that may be open would in my view be sitting on appeal in the matter. This court is now *functus-officio* having pronounced itself on the issue of distribution and confirmation of the grant.

13. As held in the case, **Ngugi v. Kinyanjui and 3 others (1989) @ KLR**, in Civil Appeal No. 1 of 1986, the Learned Judges of Appeal stated -

“In law any litigation has to come to an end. Once a decision has been reached by a competent court, it cannot be re-opened to be restarted all over again unless the decision reached has been set aside. Any decision reached, if not set aside, it can only be challenged on appeal and cannot be challenged in any inferior court, tribunal or in the same court except in case of review. The law will not allow any dispute between the same parties or between those who claim through them

to re-open the dispute while the judgment still remains on record."

1. In the circumstances, and without digging deeper into the merits and demerits of matter, I find the objectors application dated the 3rd March, 2014 unmerited and an abuse of the court process, and dismiss it with costs to the Respondent, Mary Wairimu Mungai.

2.

3. The application by the Petitioner dated 9th June, 2014 seeks an order that the Deputy Registrar of this court execute all the necessary documents to facilitate distribution and winding up of the estate in place of Daniel Kamiti Mungai the Respondent.

1. Without repeating myself, it is clear that the co-administrator of the estate Daniel Kamiti Mungai will not cooperate with the Petitioner. In deed, in his submissions in respect of this application, the Respondent states that he is not willing to cooperate with the Petitioner to distribute the estate, and gives his reasons for none-cooperation that he is unhappy with the distribution which he has challenged in his application for revocation and hence once the said application is determined he will cooperate.

1. It is submitted by the Petitioner that the conduct of the Objector/Applicant is wanting and made to delay the distribution of the estate yet the Petitioner is old aged and that this court should not leave the matter to the whims and his conscious to do what he wants when he chooses, as this is an abuse of the court process.

1. This court has considered the application, and the grounds of opposition filed on the 4th July, 2014. Directions were taken by mutual agreement that both applications be heard together. I have already dealt with the application dated the 9th June, 2014 and made my decision on the same.

This court issued a Certificate of Confirmation of grant in respect of this estate on the 13th November, 2013. In his own submissions, the Respondent has failed to cooperate and will continue to do so.

1. Section 47 of the Law of Succession Act Chapter 160, Laws of Kenya states-

1. ***"The High Court shall have jurisdiction to entertain any application and determine any dispute under this Act and to pronounce such decrees and make such orders therein as may be expedient."***

Also Rule 73 of the Probate & Administration Rules also states -

2. ***"Nothing in these rules shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the court process."***

1. The estate of the deceased has not been distributed since the confirmation of the grant on the 13th November, 2013 and it appears that that will not happen anytime soon as the co-administrator has pronounced himself on this unless this court intervenes by making appropriate orders.

2.

1. I shall invoke the inherent power donated to me by the above two sections and to prevent further abuse of this courts process, allow the application under review and dated 9th June, 2013 on the following terms -

2.

1. 1. That the Petitioner and the Respondent, being co-administrators of the estate of Francis Mungai Kangethe (*deceased*) do, within 45 days of this order, sign the necessary documents to facilitate distribution of the estate in the manner obtained in the Ruling of this court dated 13th November, 2013.

2.

1. 2. That in the event that the Respondent herein Daniel Kamiti Mungai does not cooperate with the Petitioner within the above time frame, then, the Deputy Registrar of this court is directed to execute all the necessary documents to facilitate the distribution and/or winding up of the estate in place of the said Daniel Kamiti Mungai, without further recourse to this court.
- 2.
3. 3. That costs of this application be paid by the Respondent to the Applicant.

Dated, signed and delivered at Nakuru this 6th day of March, 2015

JANET MULWA

JUDGE

Ruling read and signed in open court in the presence of:

Njuguna for Petitioner

N/A for Objector

Omondi - Court clerk