



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

PROBATE AND ADMINISTRATION DIVISION

SUCCESSION CAUSE NO. 1836 OF 2010

IN THE MATTER OF THE ESTATE OF BONIFACE NJAGA GITAU (DECEASED)

MICHAEL GITAU NJAGAAPPLICANT

- VERSUS -

CECILIA WANJIKU KIBERESPONDENT

R U L I N G

1. The deceased to whose Estate these proceedings relate is Boniface Njaga Gitau, who died on 8th September 2006 while domiciled in Kenya. Letters of administration intestate of all his Estate were issued to his widow Cecilia Wanjiku Kibe, (hereinafter the Respondent), on 22nd July 2011 and confirmed vide certificate of confirmation of grant dated 12th March 2014.
2. On 29th May 2014 Michael Gitau Njaga, (hereinafter the Objector), filed summons for revocation of the said grant in his capacity as one of the beneficiaries of the deceased's Estate. In the said summons the Objector was seeking prayers that:
 1. the Grant of letters of administration made on the 22nd July, 2010 to Cecilia Wanjiku Njaga and confirmed on 12th March, 2014 be revoked.
 2. pending the hearing and determination of this application inter-partes, the Administratrix of the Estate of Boniface Njaga Gitau be restrained whether by herself, her employees, servants and/or agents, from wasting, alienating or in any manner interfering with all that property known as Title No. Kajiado/Olekasasi/687.
 3. the court be pleased to grant orders for the conservation of all that parcel of land namely **L.R. Kajiado/OleKasasi/687** pending the hearing and determination of this application.
 4. the court do allocate all that parcel of land known as **L.R. Kajiado/OleKasasi/687** to Michael Gitau Njaga and
 5. grant any other order it may think fit and expedient in the circumstances and that costs be in the cause.

3. In the grounds of the summons the Objector states that he is the first born son of the deceased and his first wife, Karen Nyambura Njaga and the Respondent, Administratrix is his step-mother. He alleges that the Grant of letters of administration intestate in the Estate of Boniface Njaga Gitau issued to the Respondent and confirmed on 12th March, 2014 was obtained fraudulently by making of a false statement and concealment from court, of material information to this case. That some of the beneficiaries of the Estate of the deceased were not duly informed of the process and neither was their consent to the mode of distribution sought.
4. The Objector further avers that the property distributed to the Applicant herein namely, Plot No. 766 R Ongata Rongai was not available for distribution as it belongs to 3rd parties and does not form part of the Estate. He asserts that it is imperative that this honourable court makes the necessary orders for purposes of preservation of the Estate, as the mode of distribution as per the confirmation herein, will render the Applicant landless. That it is in the interest of justice that the prayers sought herein be granted.
5. The summons was opposed by the Respondent's replying affidavit, in which she admitted that she is the Administratrix of the Estate of Boniface Njaga Gitau (deceased). She asserted that the Applicant was duly served by her advocate sometimes in January 2011 and that he signed the consent to enable her obtain the grant of letters of Administration. That he applied for a grant of Letters of Administration vide succession cause No.441 of 2011 Machakos, to which she filed an application to strike out on 10th June 2011. It is her averment that in a ruling delivered on 5th December 2011 that succession cause was struck out in its entirety. She only learnt later that the Applicant had sold the property in Rongai known as Plot No.766 R Ongata Rongai, and by the time she got the names of the purchasers, they had already put up substantial developments and the court declined to grant an injunction against them.
6. The Respondent further deposed that it is not true that the Applicant was given the said piece of land by the deceased during his lifetime, but that he broke into the Respondent's house and stole the documents of Plot No. 766R Ongata Rongai. That later on he harassed the Respondent forcing her to move out of the matrimonial home in the year 2012, and eventually occupying it himself. It was her contention that the Objector and the other beneficiaries were served with summons and hearing notice, that he did not appear, and the grant was confirmed in his absence.
7. The Respondent argues that the Objector has no justification in claiming the property known as Kajiado/Ole Kasasi/687 which is her matrimonial home and which is the only property he is interested in and has registered a restriction against it at the lands office in Ngong. The Respondent avers that the property the Objector disposed off and used the money, was worth much more than what the other beneficiaries got. That it would be unfair and unjust for her matrimonial home which she shared with the deceased for many years, to be taken from her.
8. The cause proceeded by way of viva voce evidence. In both the evidence tendered in court and in the submissions that followed, each party reiterated what they had set out in their supporting and replying affidavits respectively.
9. I have perused the application before me, the attendant affidavits, the evidence on record and the rival submissions as filed. It is worth noting that the Applicant admitted to having been served with the application dated 5th March 2014 in cross-examination. He gave no explanation as to why he did not attend court on 12th March 2014 or object to the confirmation at that time. His brother from the same house attended court and consented to the mode of distribution.
10. The Applicant's complaint is that he was not consulted for the confirmation, but he admits to having signed the consent for the petition and to having filed another petition in the High Court at Machakos, knowing very well that there was a pending succession cause in Nairobi. In his evidence in chief, the Objector who had said that his father bequeathed him the plot No. 766 R Ongata Rongai intervivos, turned around in cross-examination and said that the plot was not

given to him by the deceased, but by the deceased's friend. He annexed documents which he claimed his late father's friend gave him, but which show that he transferred the plot into his name long after the death of his father without obtaining letters of Administration. He admits that thereafter he subdivided and sold the said plot to two other persons for a sum close to Kshs. 5 million.

11. The Objector squandered the proceeds of sale and returned home where by constant harassment, he forced the Respondent out of her matrimonial home where she lived for many years with the deceased. The Objector admitted that he left home when he came of age and did not return for years. It was also his evidence that by the time he came back home his father was suffering from severe senile dementia and could not recognise him. At that time there was no talk of his father having bequeathed him any land. It is also his evidence that his father never recovered till he died and that he the Applicant, left again and only returned after his father had died. It is therefore doubtful that at a later stage the deceased bequeathed him the said plot. He readily admits that the proceeds he received from the sale of the plot known as No. 766 R Ongata Rongai was more in terms of value than what each of the other beneficiaries got from the Estate.
12. The mode of distribution that had been drawn up by the Administratrix and consented to by all the other beneficiaries would have seen the Objector inherit six acres of land in Nyandarua with his brother. Divided between them, each of them would get three acres. The five girls from the house of the Administratrix would have shared the Kijabe land with each getting 1.5 acres, and together they would also have inherited the Ongata Rongai plot that measured about $\frac{1}{4}$ acre and which the Applicant allocated himself and sold. The matrimonial home standing on land measuring $\frac{3}{4}$ acre was to be left to the Administratrix.
13. I therefore find that the Objector having allocated himself the Ongata Rongai plot, sold it and utilised the proceeds of sale alone, has no justification or colour of right to demand anything more from the Estate of the deceased in the circumstances of this case. The Summons for Revocation dated 29th May 2014 is therefore dismissed for want of merit.

SIGNED DATED and DELIVERED in open court this **4th day of March 2015.**

L. A. ACHODE

JUDGE