



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 2054 OF 2007

IN THE MATTER OF THE ESTATE OF MUCHIRI MBURU (DECEASED)

JANE MUTHONI MUCHIRI

CATHERINE NJERI MUCHIRI

SALOME WAMBUI MUCHIRIAPPLICANTS

VERSUS

JOSEPH MUIGAI MUCHIRIRESPONDENT

R U L I N G

1. The application for determination before this Court is dated 27th July, 2007 and is a Summons for Revocation or Annulment of Grant. It is brought under **Section 76** of the **Law of Succession Act, Cap 160, Laws of Kenya** and **Rule 44** of the **Probate and Administration Rules**. In the main the Applicants seek from Court, orders that the Letters of Administration granted on 21st April, 2004, and confirmed on 28th June, 2007 be revoked and annulled on the grounds that 2nd and 3rd Applicants being children of the second marriage, were not provided for in the deceased's estate. That the Grant was Confirmed without due regard to the provisions of Section 42 of the Law of Succession Act Cap 160. That the cost of this application be provided for.

2. The application is based on allegations that the Confirmed Grant has not provided any share of the deceased's estate to the 2nd and 3rd Applicants, who are daughters of the deceased. That the applicants are entitled to a share each from the Estate and the grant as confirmed, offends the provisions of Section 42 of the Law of Succession Act.

3. The application is supported, by the affidavit of JANE MUTHONI MUCHIRI, (hereinafter Jane) the 1st Applicant herein, sworn 27th July 2007. In her affidavit, she has made several averments. Salient among them are that; on 1st October, 2002, she filed Succession Cause No. 72 of 2002 in her capacity as a widow of the late Muchiri Mburu; that on 21st April, 2005, the Court issued Grant of Letters of Administration to her and the Respondent; that on 22nd September, 2006, the Respondent applied for the Confirmation of the Grant with a proposal on how the deceased's estate was to be shared among the beneficiaries.

4. Jane deponed that in the application for Confirmation of Grant, the 2nd and 3rd Applicants were completely left out in the sharing of the estate yet they were also beneficiaries. That the mode of distribution was unfair to her together with the 2nd and 3rd Applicants since it did not take into

consideration that some beneficiaries had already benefited from the deceased's estate. That the said mode of distribution is grossly unfair as it has treated her as a child of the deceased yet she is a widow with children, that is, the 2nd and 3rd Applicants herein, who have also been denied a share of the deceased's estate.

5. In opposition to the application, the Respondent filed a Replying Affidavit dated 24th October, 2007 and averred among others, that the 1st Applicant is wrong to say that the 2nd and 3rd Applicants are entitled to a share in the deceased's estate since they are married and are not biological children of the deceased. He further averred that the deceased had 4 daughters who are married and were also left out during the distribution of the deceased's estate as were the 2nd and 3rd Applicants. That when the 1st Applicant applied for the Grant at Githunguri Court, she left out some assets of the deceased's Estate such as shares and only came to know about them when the Respondent filed the Application for Confirmation of Grant at Githunguri Court.

6. The Respondent therefore prays that the Court do dismiss the Summons for Revocation and/or Annulment of Grant and let the decision of the Githunguri court remain in place. He also prays that the assets of the deceased be shared equally by all the beneficiaries.

7. The 1st Applicant and the Respondent appeared in court in person and gave oral evidence at the hearing on 3rd November, 2014.

8. This court having considered the application, the affidavits on record and the rival oral submissions by the parties, finds that the main issue for determination is whether the Applicant has made a case to warrant the revocation or annulment of the grant issued herein.

9. It is imperative to note that the law gives this court wide discretion to revoke or annul a grant issued by the court, whether the said grant has been confirmed or not. **Section 76 of the Law of Succession Act, Cap 160 Laws of Kenya** establishes the grounds upon which a grant of representation may be revoked thus:

“A grant of representation whether or not confirmed may at any time be revoked or annulled if the court decides, either on the 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 in advertently.

(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 has ordered or allowed; or

(ii) To proceed diligently with the administration of the estate; or

(iii) To produce to court within the time prescribed any such inventory or account of administration as is required by the provisions of a paragraph (e) and (g) of section 83 or has produced any such inventory or account which is false in any material particular.

(e) That the grant has become useless and in operative through subsequent circumstances.

The grounds for revocation of a grant of representation are therefore well provided for statutorily, as outlined above.

10. The 1st Applicant's main contention is that the 2nd and 3rd Applicants were left out in the said Confirmed Grant. The Respondent's response is that the 2nd and 3rd Applicants are not biological children of the deceased and that they are married.

11. In his Supporting Affidavit to the Summons for Confirmation of Grant dated 14th September, 2006, however the Respondent listed the 2nd and 3rd Applicants as dependants, among others who survived the deceased. He described the two as daughters to the deceased, although it is not disputed that the 2nd and 3rd Applicants were not his biological children. From the evidence recorded, the 2nd and 3rd Applicants were among the deceased's dependants.

12. Therefore, having so established the 2nd and 3rd Applicants are entitled to a share of the said estate. It has also been established that they were left out in the distribution of the said estate. The Respondent's submission that they were married does not hold. The law does not bar married women from inheriting, for to do so would be repugnant to justice.

13. However, the Applicants in my considered view have not met the conditions that would justify the annulment or revocation of the confirmed grant. The grounds cited in this application are not those envisaged under Section 76 Law of Succession Act. Consequently, this Court cannot exercise its discretion in the manner sought.

14. The Applicants have failed to establish before this Court that the procedure followed to obtain the said grant was defective in substance, and neither have they shown the Court that the said grant was obtained fraudulently, or by concealment from the court of something material. The court was not told that the said grant was obtained by means of an untrue allegation of a fact essential in point of law or that the grant has become useless and inoperative through subsequent circumstances.

15. These are the grounds upon which this court could properly exercise its discretion, once any of them is established, to revoke or nullify the grant.

16. Beyond that however, in the ruling at Githunguri court the Senior Resident Magistrate gave her reasons for finding that the Applicant was a wife rather than the hired help of the deceased. I agree with her reasoning. In that court, two brothers of the deceased who have also since passed on testified to the fact that the Applicant was a wife to the deceased. They also testified that the deceased did subdivide his land No. Gatamaiyu 1142 into four pieces in the year 2000 while he was still alive.

17. In the cause before me the Respondent admitted that the father subdivided the said piece of land into four portions. That he gave a portion measuring 1¼ acres to each of his three sons and retained a portion measuring 2¼ for himself. Each of the three sons moved into their portions and the deceased lived on his portion with the Applicant.

18. The deceased had four daughters by his first wife and two foster daughters who belonged to the Applicant. None of them was provided for in his distribution and the reason he gave was that they were all married. Neither the sons nor the daughters raised any objection to the manner in which the deceased had distributed his land and to date the sons live in the portion he gave them and to which they obtained titles. Although the Applicant has only talked about her two daughters, none of the six daughters was provided for and none of their own volition has laid claim to any part of the Estate.

19. The fourth portion of land known as Gatamaiyu/Kagwe/1507, measuring 2¼ acres and in which the matrimonial homestead currently stands is the subject of this distribution. In another vein, although not pleaded or argued before this court, the court cannot shut its eyes to the fact that the Senior Resident Magistrate's Court at Githunguri, lacked pecuniary jurisdiction to issue the grant dated 21st April 2005. The Estate of the deceased is obviously worth more than the limit of Kshs.100,000/= provided for by

Section 48 Law of Succession Act, for the subordinate Courts in matters of succession.

20. For the fore going reasons which I have carefully considered, the court makes orders as follows:

- 1) The grant issued to Jane Muthoni Muchiri and Joseph Muigai Muchiri on 21st April 2005 by Githunguri Senior Resident Magistrate's Court be and is hereby revoked.
- 2) Succession Cause No. 72 of 2002 Githunguri Senior Resident Magistrate's Court be and is hereby consolidated with this succession cause No. 2054 of 2007 High Court since the record so far does not reflect such consolidation.
- 3) There being a petition in this cause by virtue of the consolidation of the two causes a fresh grant is hereby issued to the two Administrators.
- 4) The court, after taking into account the portions distributed to the two sons *inter vivos*, confirms the said grant and distributes the remaining Estate of the deceased as set out below:

Gatamaiyu/Kagwe 1507

Jane Muthoni Muchiri - 1¼ acres

Jane Muthoni Wanyoike

Susan Wambui Wanyoike

Naomi Wanjiru Karanja

Wanjiku Gichuha 1 acre to share equally

Catherine Njeri Muchiri

Salome Wambui Muchiri

The rest of the assets will be distributed as set out in the affidavit of Joseph Muigai Muchiri sworn on 14th September 2006 in support of the Summons for confirmation of grant since Jane Muthoni has not impugned any part thereof. The distribution is as set out below:

Name	Property	Share	
Joseph Muigai Muchiri	Kagwe Tea Factory shares	To be shared equally	
Samuel Chuthu Muchiri	Nyakinyua shares		
John Ng'ang'a Muchiri	Thome shares		

Jane Muthoni	Matara Tea Factory shares Mahoya shares	Whole

SIGNED DATED and **DELIVERED** in open court this **13th** day of **July 2015**.

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L. A. ACHODE

JUDGE