



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIVASHA
SUCCESSION CAUSE NO. 8 OF 2015

IN THE MATTER OF THE ESTATE OF NJAU KIARIE NYAMUGOIRI (DECEASED)

(Original Succession Cause No. 92 of 2014 of the Chief Magistrate's Court at Naivasha)

SIMON KIARIE NJAU.....APPLICANT

-VERSUS-

RAKERI WAMBUI GITAU.....1ST RESPONDENT

MARGARET NYAMBURA MWANGI.....2ND RESPONDENT

MARGARET NJERI MUHOI.....3RD RESPONDENT

BEATRICE NDUTA KARANJA.....4TH RESPONDENT

RULING

1. On 9/12/2014 the Applicant, a son of Njau Kiarie Nyamugoiri the deceased, filed summons for revocation of the grant made to his sisters Rakeri Wambui Gitau, Margaret Nyambura Mwangi, Margaret Njeri Muhoi and Beatrice Nduta Karanja in respect of the deceased's estate on grounds that:
 - “a) The grant was obtained fraudulently by making of a false statement and by concealment from the court of some material facts.**
 - b) The grant was obtained by means of untrue allegation of a fact essential in a point of law to justify the grant.**
 - c) The Respondents have failed to give a true account of the estate of the deceased.”**
2. The application is supported by the Applicant's affidavit. The gist thereof is that the Petitioners obtained the grant through fraud by making false statements. In particular, it is asserted that the Petitioners did not inform, involve or obtain the consent of all children of the deceased regarding the petition for the grant.
3. The dependants or entitled persons allegedly excluded are named as Simon Kiarie Njau, (Applicant), Samuel Nganga Njau and John Thiong'o Wanjau (sons of the deceased) and the grandsons of the deceased, namely, Peter Karanja Wanjiru and Daniel Njau Wanjiru. The Petitioners also allegedly failed to include a parcel of land namely

NYANDAURA/TULAGA/2309 among the assets of the deceased.

4. In their Replying affidavit, the Petitioners denied excluding some of the children of the deceased from the succession proceedings. They assert that all the siblings attended the chief's office when the introduction letter to initiate the administration process was prepared.
5. The Petitioners explain that the Applicant and other brothers, a sister Rahab Kimani and grandsons, of the deceased had already been allocated land parcels by their deceased father before his death, which parcels were transferred to them. That land parcel number NYANDARUA/TULAGA/5400 the subject of the petition was assigned to the Petitioners together with the annexed title in the name of the deceased.
6. That the Applicant has already purportedly sold land parcel number NYANDARUA/TULAGA/2309 to third parties who are in possession. The Petitioners disclaim any interest in the said land parcel.
7. The application was disposed of by way of written submissions which I have considered together with the respective affidavits. The application is brought primarily under Section 76 of the Law of Succession Act.
8. From the affidavits of the rival parties, it is evident that the deceased died intestate and was survived by his children consisting of 3 sons and 5 daughters, and two grandchildren. He had several properties including the parcels number NYANDARUA/TULAGA/2309 and NYANDARUA/TULAGA/5400.
9. It would seem from the Petitioners' affidavit that certain properties had already been gifted to the children *inter vivos* even though the two parcels in question are still in the name of the deceased. The Chief's letter in support of the Petition, dated 28th May 2015 appears to suggest that since other beneficiaries had already received their share of the estate from their father while living, only the Petitioners were entitled to the remaining portion NYANDARUA/TULAGA/5400. This too is the position adopted by the Petitioners.
10. It is not clear that proper notice was given to the Applicant and other beneficiaries before the Petitioners lodged the Petition. The Chief's letter merely lists the names of the heirs and does not clearly establish that the parties were present. Equally, the letter cannot obviate the need to obtain consent from the other entitled persons as required under Rule 26 (2) of the Probate and Administration Rules. Although the Petitioners did list all the entitled persons in the affidavit in support of the Petition and obtained the consent of one of the daughters Rahab Njoki Kimani, they failed to obtain written consent from the brothers including the Applicant.
11. They also did not include the land parcel number NYANDARUA/TULAGA/2309. The explanation in their Reply in my view appears to dispel any notions of a fraudulent intent on their part. Acting in person, the Petitioners may have been misguided especially in light of the letter written by the chief. Be that as it may, for excluding known beneficiaries or persons entitled as well as certain assets of the estate, the Petition was not properly presented to the court. Secondly, I note that the value of the assets of the estate of the deceased clearly exceeded the jurisdiction of the magistrate's court as set out in the Section 48 of the Laws of Succession Act.
12. For these reasons I do allow the application and do revoke the grant made to the Petitioners. In order to facilitate a complete and final distribution of the estate of the deceased, the court directs that any two sons of the deceased together with two daughters, as will be agreed between the persons entitled to file a fresh petition in the High Court, including and giving notice to all the children of the deceased. If no agreement is reached between the entitled persons as to the selection of the Petitioners, within six months of today's date, the present Petitioners will be at liberty to file a fresh Petition for grant but note to comply with the Probate and Administration Rules.

13. The Applicant herein was directed to serve the present application upon all dependants previously. I note that there is no evidence that he complied. Indeed there is no indication that any of the brothers have notice of the application. I direct that the Applicant herein is to extract a copy of this ruling and within 21 days serve it upon his brothers and the two nephews he has named. He will file an affidavit of service to confirm compliance within the said 21 days of today's date. Each party will bear its own costs.

Delivered and signed at Naivasha this **10th** day of **July, 2015**

In the presence of

N/A for Applicant

Mr. Gichuki for Petitioners/Respondents

Court Clerk Stephen

C. W. MEOLI

JUDGE