



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

FAMILY DIVISION

SUCCESSION CAUSE NO.1524 OF 2011

IN THE MATTER OF THE ESTATE OF MIRIAM WAMBUI KARIUKI (DECEASED)

CATHERINE WAIRIMU KAHORA.....APPLICANT

VERSUS

ANDREW KARIUKI MIRUGI.....1ST RESPONDENT

SERAH WACHEKE NG'ANG'A.....2ND RESPONDENT

NAHASHON MUGO MIRUGI.....3RD RESPONDENT

JUDGMENT

1. The deceased Miriam Wambui Kariuki died intestate on 20th June 2010. The respondents petitioned for the grant of letters of administration intestate. The grant was issued to them on 3rd November 2011 and was subsequently confirmed on 7th May 2013. The only property of the estate was LR No. Kiambaa/Ruaka/2785 which was distributed as follows:-

- a. 1st respondent – 1.3455 acres;
- b. 3rd respondent – 1.0995 acres;
- c. 2nd respondent – 0.25 acres;
- d. Rose Wambui Mirugi – 0.125 acres; and
- e. Josephine Nungari Gacheru – 0.125 acres.

The distribution followed a consent signed by these beneficiaries.

2. The history of this family was that the late Johnson Kariuki Kahugu had two wives. These were Florence Mwhaki Kariuki and the deceased herein Miriam Wambui Kariuki. Each widow (house) had three children. The children in the deceased's house were Bethwel Kahugu Kariuki (the applicant's father), Sarah Wacheke Nganga (the 2nd respondent) and Fredrick Mirugi Kariuki (the father of the 1st respondent, 3rd respondent, Rose Wambui Murugi and Josephine Nungari Gacheru).
3. The applicant filed this summons dated 14th January 2014 seeking the revocation of the grant on the grounds that the proceedings leading to the grant were defective in substance; the grant was obtained fraudulently by the making of false statements and representations and concealment of

- facts material to the case; the grant was obtained by means of untrue allegations of facts essential in law; and that she had been excluded from sharing in the estate. In the affidavit in support of the application, she stated that despite being a beneficiary of the estate of the deceased by virtue of being a granddaughter she was never informed of the proceedings and only learnt of the Cause long after confirmation. She asked that the grant be revoked and each beneficiary gets an equal entitlement.
4. The respondents denied that the applicant was a beneficiary of the estate of the deceased, or that she was entitled to inherit the estate. They denied that they had concealed any information from the court.
 5. The application was heard by oral evidence. The applicant testified on the objection and did not call witnesses. The 1st and 2nd respondents testified in opposition. They called two witnesses. Those were Kenneth Kariuki Kahugu (DW1) and Florence Njambi Chege (DW 2). DW 1 is the brother of the applicant and DW 2 is the wife of the late Moses Chege Kariuki who was the son of the late Johnson Kariuki Kahugu by Florence Mwihaki Kariuki (the co-wife of the deceased). She is 75 years old.
 6. The evidence of the respondents was that during land demarcation and consolidation the applicant's father Bethwel Kahugu Kariuki was of age. His father (the late Johnson Kariuki Kahugu) gave him 7 acres which became registered in his name. Bethwel's siblings (the 2nd respondent and Fredrick Mirugi Kariuki) had not attained the age of majority. The late Johnson Kariuki Kahugu got their portions to be registered in the name of their mother (the deceased) to hold for them. It therefore follows that the estate left by the deceased was to be inherited by her children only. Now that one of them (Fredrick Kariuki Kahugu) died, his portion was to go to his children (1st and 3rd respondents and Rose Wambui Mirugi and Josephine Nungari Gacheru). The other portion was to go to the 2nd respondent. This is why the respondents stated that the applicant inherited his father and has no claim to the estate of the deceased. DW 1 is the applicant's brother and supported what the respondents and their witnesses told the court. He stated that his sister (the applicant) has no claim to the estate of the deceased. DW 2 was married into the family of the late Johnson Kariuki Kahugu during land demarcation and consolidation and testified as to what happened at the time: that the late Johnson gave land to all his children who were of age at the time and that included Bethwel who was then married.
 7. The applicant's evidence was that the 7 acres that belonged to her father (Bethwel) was land that he had bought. She was, however, cross-examined to admit that she was not born during land demarcation and consolidation. She would not therefore know how her father came to own the land. It is also material that the applicant has in all nine (9) siblings. She is the only one claiming land from the deceased. That is quite telling. It is also not in dispute that she took care of the deceased during her old age. For that the deceased gifted her with a piece of land.
 8. I have considered the affidavit and oral evidence of all the witnesses herein. I find that the applicant has no claim to the estate of the deceased. She was not the deceased's beneficiary and was not entitled to be included in the proceedings that led to the grant of letters of administration and its confirmation. I dismiss the summons for revocation with costs.

DATED and DELIVERED at NAIROBI this 2nd November 2015.

A.O. MUCHELULE

JUDGE