



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
FAMILY DIVISION
SUCCESSION CAUSE NO. 1190 OF 1991

IN THE MATTER OF THE ESTATE OF THE LATE JUSTUS DANIEL MAMBO -
(DECEASED)

MARY WAMURANGO NUMBI.....APPLICANT

AND

MICHAEL MWITHI MAMBO.....1ST RESPONDENT

LUCY WAIRIMU MAMBO.....2ND RESPONDENT

JUDGMENT

1. The deceased JUSTUS DANIEL MAMBO died intestate on 9th April 1987. He was resident of Kirinyaga but died in Nairobi. On 23rd October 1995 his son (1st respondent) and daughter (2nd respondent) petitioned this court for the grant of letters of administration intestate. The grant was issued on 31st January 1992 and later confirmed. A certificate of confirmation of grant issued on 20th October 2003 and subsequently amended on 27th February 2007. The estate was shared among the six children of the deceased. They included the respondents.
2. On 26th January 2012 the applicant filed summons for the revocation or annulment of the grant. The application was brought under **section 76(a), (b), (c) and (d) (iii)** of the **Law of Succession Act (Cap 160)** and **rule 44** of the **Probate and Administration Rules**. It was brought on the grounds that the proceedings upon which the grant was issued were defective in substantive; the grant was obtained fraudulently by the making of a false statement and by the concealment of material evidence; the grant was obtained by means of untrue allegation of fact essential to the matter; and that the respondents had failed to proceed diligently to administer the estate.
3. In the affidavit sworn in support of the summons, the applicant stated that she was the sister of the deceased and a beneficiary of the estate who was not informed when the matter came for the

confirmation of the grant and therefore did not attend the hearing. She stated that she was a dependant of the deceased as she was living on and cultivating parcels MUTIRA/KIRIMUNGE/205 and MUTIRA/KAGUYU/197 and that she had put up a permanent house thereon in which she had lived for over twenty years with her children. She had now been threatened with eviction by the respondents following the confirmation of the grant and the distribution of the estate, including these parcels, to the family of the deceased. It is notable that the deceased left the land parcels and also parcel MUTIRA/KIRIMUNGE/210, and other movable properties. In the distribution each child got 1/6 of the estate.

4. The respondents opposed the summons and filed a replying affidavit to state that they had complied with the law in bringing and prosecuting the petition that had resulted in the grant. They denied that they had carried out the exercise secretly. On the applicant's claim to the estate, they stated that she was a married woman with children and residing at Kagio, and that she was neither a beneficiary nor a dependant of the estate. Their case was that the estate had been distributed to its *bonafide* beneficiaries and that, in any case, they had no obligation to inform the applicant. They annexed proceedings in **Land Disputes Tribunal Case No. 19 of 2007** at the Senior Resident Magistrate's Court at Kerugoya in which the applicant had unsuccessfully claimed the two parcels against them. She had lost because, according to the court, she could not maintain the claim as it was over property belonging to the deceased. She had been advised to file a succession cause. That is how, probably, she filed the summons.
5. While the summons was pending, the applicant brought the present application on 30th July 2013 under **section 3A** of the **Civil Procedure Act** to have this Cause transferred to the High Court at Kerugoya for hearing and determination. Her case was that the immovable properties in the Cause were situated within Kirinyaga County, and that there is in the County a High Court at Kerugoya that is functional. She stated that the parties to the dispute come from the County and therefore that all along the matter ought to have been filed at the High Court at Kerugoya. The respondents filed a statement of grounds of opposition making reference to the staying of **Kerugoya HC ELC No. 9 of 2012** and the dismissal of the Land Disputes Tribunal case. They asked why the applicant had not prosecuted the summons for revocation or annulment of the grant, and claimed that the application was misconceived, incompetent, gross abuse of the process of the law and meant to delay the case. Lastly, that the application was in breach of the mandatory rules of procedure and premised on the wrong provisions of the law.
6. It is clear that what is pending in the Cause is the summons for the revocation and annulment of the grant that was issued in favour of the respondents. This is what the applicant seeks to be transferred to the High Court at Kerugoya for hearing and determination. The respondents have not challenged the factual basis of the application for transfer. I therefore find that the estate comprised parcels of land situated in Kirinyaga County; that within the County there is the High Court at Kerugoya; the parties herein reside in the County; and that, compared to the High Court at Nairobi, the High Court at Kerugoya is nearer to the parties and to the parcels of land in the estate.
7. I asked for written submissions which M/S ANNE THUNGU & CO. Advocates for the applicant filed. It is evident that in **HC ELC NO. 9 of 2012** at Kerugoya the applicant sued the respondents in their capacity as the administrators of the estate of the deceased seeking a declaration that the deceased held 10 acres out of parcels MUTIRA/KIRIMUNGE/205 and MUTIRA/KAGUYU/197 in trust for her. The suit was stayed by ruling delivered on 9th September 2013 to await the hearing and determination of the summons for revocation or annulment that is pending herein.
8. Directions have not been taken in the summons, but the applicant indicates in the submissions filed on her behalf that she will be seeking oral hearing of the same. In that case, parties may be allowed to call witnesses, etc.
9. The reason why the judiciary is increasingly building and spreading courts around the country is so as to make it possible for Kenyans to file whatever disputes they may have at the courts nearest

to them. It is a question of convenience and cost for such litigants. But more important, it is a question of access to justice which is a fundamental and constitutional principle. This is why, for instance, under **Order 47 rule 46** of the **Civil procedure Rules**;

“(2) The court may of its own motion or on the application for any party to a suit and for cause shown order that a case be tried in a particular place to be appointed by the court:

Provided always that in appointing such particular place for trial the court shall have regard to the convenience of the parties and of their witnesses and to the date on which such trial is to take place, and all other circumstances of the case.”

10. Further, it is for the same reason that, for instance, **section 12** of the **Civil Procedure Act** provides for institution of suits concerning immovable property in the court in the local limits of whose the property is situated, and **section 15** provides for other suits to be instituted where the defendant resides or where the cause of action arises. In the case of **JAZIRA AGENCIES (NRB) LIMITED V DOLHIN STATIONERS LTD (MSA HCCC NO. 477 OF 1998)** the court made reference to Halsbury Laws of England as follows:

“The Court’s power to transfer proceedings from one court to another is a useful corrective measure to ensure that proceedings wherever began or whatever forum the plaintiff has initially chosen should be dealt with or heard or determined by the court most appropriate or suitable for those proceedings. When making or refusing an order for transfer the court will have regard to the nature and character of the proceedings, the nature of the relief or remedy sought, the interests of the litigants and the more convenient administration of justice. It is discretionary power which will be exercised having regard to all the circumstances of the case.”

11. I have considered all the circumstances of this Succession dispute. The sister of the deceased is laying claim to part of the estate left behind. The claim is being lodged against the family left by the deceased that says that she was neither a beneficiary nor a dependant. The estate claimed is immovable property that is situated in Kirinyaga County. That is where all the parties reside. There is a High Court in Kerugoya in that County. The law requires that the Cause be heard in the Court. In any case, it would be more convenient and less costly, to have the dispute heard and determined by the court that is nearest the parties and the subject matter. These are the reasons why I allow the application and order that this Succession Cause be transferred to the High Court at Kerugoya for hearing and disposal. Because of the nature of the dispute, and the fact that the matter has been in this court for long, I ask that each side bears its own costs in the application.

DATED and DELIVERED at NAIROBI this 6th day of November, 2014.

A.O. MUCHELULE

JUDGE