



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

FAMILY DIVISION

SUCCESSION CAUSE NO. 2666 OF 2011

IN THE MATTER OF THE ESTATE OF NJOROGE KIRUGU (DECEASED)

PENINA NJOKI NJOROGE.....APPLICANT

VERSUS

ISAAC MWAURA WAWERU.....RESPONDENT

JUDGMENT

1. The applicant filed this summons under **section 76 of the Law of Succession Act (Cap 160)** and **rule 44(1)** of the **Probate and Administration Rules** seeking that the grant of letters of administration intestate issued to IBRAHIM WAWERU NJOROGE on 3rd May 1988 and confirmed on 31st January 1989 be revoked and or annulled. The application was based on the grounds that the proceedings leading to the grant were defective in substance; the grant was obtained fraudulently by the making of false statement and or by the concealment from the Court of something material to the case; the grant was obtained by means of an untrue allegation of fact essential on point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently; the administrator concealed the existence of the other beneficiaries; and that he did not obtain their consent during the distribution of the estate.
2. The respondent is the son of IBRAHIM WAWERU KIRUGU whose estate he is the administrator. He opposed the application and filed grounds of opposition. The grounds were that:-
 - a. the application was res-judicata;
 - b. the application and its supporting affidavit were defective and bad in law and form; and
 - c. the application was frivolous, vexatious, incompetent and an abuse of the process of the court.
3. Parties agreed to deal with the application by way of written submissions. The applicant's counsel filed the submissions.
4. The history of this case is that the deceased NJOROGE KIRUGU died intestate at Ngecha in Kiambu in 1963. On 2nd December 1987 his brother KARIUKI KIRUGU and daughter PENINAH NJOKI NJOROGE (the applicant) filed **KIAMBU SRM SUCCESSION CAUSE NO. 219 OF 1987** seeking to be granted letters of administration intestate. The estate comprised land parcels LIMURU/MBARI-YA-IGI/14, LIMURU/MBARI-YA-IGI/T.196 and LIMURU/MBARI-YA-IGI/T.197. The sons of the deceased were indicated as WAWERU

NJOROGE, MBURU NJOROGE, IRURIA NJOROGE and NGIGI NJOROGE. WAWERU NJOROGE (also called IBRAHIM WAWERU NJOROGE) was the eldest son of the deceased. He filed an objection and also cross-petition for a grant. He was supported by his brothers. The dispute was heard and letters of administration granted to IBRAHIM WAWERU NJOROGE on 26th July 1988. It was ordered that the applicant and KARIUKI KIRUGU be treated as next of kin. The applicant was aggrieved and filed an appeal to this court. The parties entered a consent to have the dispute heard in full by the subordinate court to which the file was ordered to be returned. The file that was remitted to the subordinate court where it went missing for a while. IBRAHIM WAWERU NJOROGE died on 28th October 2009. On 31st May 2010 the applicant applied to be substituted in his place. The request was granted on 15th July 2010 whereupon she became the new administrator. Unknown to her, the grant to IBRAHIM WAWERU NJOROGE had been confirmed on 31st January 1989 and the entire estate transferred to him. Her case is that she was not informed about the confirmation, and neither was her consent sought. Further that, the other beneficiaries to the estate were also not informed that the matter was being confirmed.

5. The factual basis of this application was not opposed as no replying affidavit was filed.

6. The law under section 71(i) of the Law of Succession Act is that:-

“the grant of letters of administration shall not be confirmed until the court is satisfied as to the respective identities and shares of all persons beneficially entitled; and when confirmed the grant shall specify all such persons and their respective shares.”

There is no evidence on record, and even in the subordinate court file that was made available, that the applicant and the other beneficiaries were made aware of the application for confirmation, and neither was their consent sought or obtained, before or at the time of confirmation. The applicant and the beneficiaries had stated their claim to the subordinate court, and had been indicated in P & A No. 5 as persons surviving the deceased NJOROGE KIRUGU. They were entitled to be served at every single stage of the proceedings. Further, IBRAHIM WAWERU NJOROGE knew that an appeal had been lodged by the applicant. Whatever was going on was therefore subject to the decision on appeal. The result of all that happened was that all the three parcels in the estate went to IBRAHIM WAWERU NJOROGE to the exclusion of the other beneficiaries.

7. Further, the High Court had ordered that the dispute be heard fully by the subordinate court. There is no evidence that the hearing was done. Instead, IBRAHIM WAWERU NJOROGE obtained a secret confirmation and went on to inherit the entire estate.

8. I hope I have said enough to show that, the grant was confirmed contrary to the law. The grant is hereby ordered to be revoked and all the transactions that followed the confirmation are cancelled. In particular, the registration of any of the parcels of the estate in the name of IBRAHIM WAWERU NJOROGE, or any other subsequent registration, is cancelled and the parcels ordered to revert into the name of the deceased NJOROGE KIRUGU. The costs of the application shall be paid by the respondent.

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

A.O. MUCHELULE

JUDGE