



REPUBLIC OF KENYA.

IN THE HIGH COURT OF KENYA AT KITALE.

P & A CAUSE NO. 110 OF 2002.

**IN THE MATTER OF THE ESTATE OF NGUGI MUCHUGU
KARUU :::::::::::::::::::::::::::::::DECEASED.**

HANAH NJERI NGUGI:::::::::::::::::::::::::::::PETITIONER/RESPONDENT

VERSUS

DAVID KIARIE NGUGI:::::::::::::::::::::::::::::APPLICANT

R U L I N G

The deceased, **Ngugi Muchungu Karuu**, died on 5th April, 2002 at the age of eighty two (82) years. He was survived by a widow, **Hanah Njeri Ngugi**, who is the respondent in this application, and seven (7) children i.e. six (6) sons and one (1) daughter.

The applicant herein, **David Kiarie Ngugi**, is the third eldest son. His application dated 11th October, 2013 is essentially for the revocation and/or annulment of the grant of letters of administration respecting the estate of the deceased issued to the respondent on the 12th June, 2003 and confirmed on the 21st October, 2004 and that a fresh grant be issued to him (applicant).

The grounds for the application are that the respondent has failed to proceed diligently with the administration of the estate. That, the respondent is disposing of and intends to transfer to third parties the estate of the deceased. That, it is just and fair and in the interest of both parties for the application to be allowed and that no prejudice shall be suffered by the respondent if the order sought is granted. These grounds are fortified by the averments contained in the applicant's supporting affidavit dated 11th October, 2013.

The respondent opposes the application on the basis of the averments contained in her replying affidavit dated 15th October, 2014.

After due consideration of the supporting grounds and those in opposition to the application, this court notes that the estate property in dispute is a portion of land described as **Plot No. 259 Suwerwa Settlement Scheme** measuring sixteen (16) acres.

The certificate of confirmation of grant issued on 21st October, 2004 indicated that the said property was to be registered in the name of the respondent as the sole widow of the deceased.

The registration meant that the respondent was expected to deal with the property in a manner which was beneficial to herself and her children including the applicant since the property was treated as family

land. The family of the deceased being the respondent and all her children. And being the sole administrator of the estate the respondent was under an obligation to proceed diligently with the administration of the estate and in particular, to adhere to the requirements of section 83 of the Law of Succession Act (Cap 160 Laws of Kenya) which essentially specifies the duties of an administrator prior to and after confirmation of the grant which remains valid for all intents and purposes unless revoked and/or annulled by the court in accordance with section 76 of the aforementioned Act.

Such revocation and/or annulment may occur or precipitated by different circumstances including where an administrator fails to proceed diligently with the administration of the estate even after due notice and without reasonable cause.

This application presupposes that the respondent has failed to proceed diligently with the administration of the estate. It was therefore incumbent upon the applicant to establish the fact if exercise of discretion by this court is to be in his favour. His major complaint as may be deciphered from the supporting affidavit and the submissions by the learned counsel, Mr. Ingosi, is that the respondent has or intends to dispose off by sale part of the estate property without the consent of all the beneficiaries or the court.

Indeed, in her replying affidavit, the respondent concedes that part of the property was sub-divided and disposed off by herself for valuable consideration and pursuant to lawful procedure. She thus implied that she has not failed to proceed diligently with the administration of the estate of her own benefit and that of the other beneficiaries.

The fact that it is only one beneficiary (i.e. the applicant) of out of the seven (7) beneficiaries who is complaining may lend credence to the respondent's contention that part of the property was or is intended to be sold in a lawful manner thereby implying prior consent from a majority of the beneficiaries.

It cannot therefore be said that the respondent has failed to proceed diligently with the administration of the estate merely because one beneficiary may not be in agreement with certain aspects of the administration.

In any event, the applicant has not shown that prior notice was given to the respondent by himself in terms of section 76 (d) of the Law of Succession Act so that the respondent may strictly adhere to the requirements of section 83 of the Act before any application for revocation was made.

However, it is evident that in selling part of the estate property, the respondent did not obtain prior consent of the court. This brought her into conflict with section 37 of the Act which provides that:-

“A surviving spouse entitled to a life interest under the provisions of section 35 or 36 with the consent of all co-trustees and all children of full age or with the consent of the court, may, during the period of th life interest, sell any of the property subject to that interest if it is necessary for his own maintenance. Provided that, in the case of immovable property, the exercise of that power shall always be subject to the consent of the court.”

Clearly, the court did not give consent to the sale or intended sale of part of the estate property which is

immovable property comprising land portion plot No. 259 Suwerwa Settlement Scheme. However, such consent may be sought prior to the transfer of part of the property to third parties.

Otherwise, the applicant has not demonstrated to the satisfaction of this court a case for exercise of discretion in his favour by way of revocation and/or annulment of the grant.

But, on her own admission and demonstration by production of medical documents, the respondent is a very elderly and ailing woman with grown up children. It is therefore necessary that she be assisted in the administration of the estate by two of the other beneficiaries.

In that regard and in the exercise of the powers conferred to this court under section 73 of the Probate & Administration Rules, it is hereby ordered that the grant be rectified to include two additional administrators in the persons of the second and third eldest sons of the deceased i.e. **Peter Wainaina Ngugi and David Kiarie Ngugi** (the applicant herein).

It is accordingly ordered.

[Read and signed this 4th day of December, 2014.]

J.R. KARANJA.

JUDGE.