

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO.384 OF 1984

IN THE MATTER OF THE ESTATE OF KIMAMU KAHUNGU (DECEASED)

POLLY NYAMBURA

KAHUNGU.....APPLICANT

VERSUS

LOISE NYAMBURA NGUGI.....

RESPONDENT

RULING

Kimamu Kahungu, the deceased to whose estate these proceedings relate died on 28th June 1991. On 11th May 1984, Geoffrey Ngugi Kahungu petitioned this court to be issued with a grant of letters of administration intestate in respect of the estate of the deceased. In the affidavit in support of the petition, the said Geoffrey Ngugi Kahungu deponed that he was the only beneficiary of the estate of the deceased. He swore that he was the beneficiary of the deceased by virtue of being his (the deceased's) son. He was on 27th June 1984 issued with the grant of letters of administration intestate to administer the estate of the deceased. The grant was confirmed on 24th January 1985. From the pleadings filed in this case, it was apparent that upon the grant being confirmed, the said Geoffrey Ngugi Kahungu inherited a parcel of land registered as LR.No. Dagoretti/Uthiru/504. This parcel of land was later subdivided to create several parcels of land including LR.No.Dagoretti/Uthiru/1053 (the suit parcel of land). Geoffrey Ngugi Kahungu died on 11th March 2008. From the pleadings filed herein, it was apparent that no one has petitioned this court to be the administrator of his estate.

On 27th March 2012, Polly Nyambura Kahungu (the Applicant) filed summons for revocation of grant pursuant to the provisions of **Section 76(b) & (c)** of the **Law of Succession Act** and **Rule 44(1)** of the **Probate and Administration Rules**. The Applicant sought the said grant to be revoked on the grounds that the same was obtained by Geoffrey Ngugi Kahungu by concealing material facts from the court. In particular, she stated that the said Geoffrey Ngugi Kahungu concealed from the court that she was a daughter of the deceased and therefore entitled to inherit a portion of the property that comprised the estate of the deceased. She deponed that she was entitled to inherit the subdivided portion of land now registered as LR.No.Dagoretti/Uthiru/1053. She swore that this is the parcel of land that she has been occupying since before the death the deceased. The summons is supported by the supporting affidavit of the Applicant. The Applicant named Loice Nyambura Ngugi, the widow of Geoffrey Ngugi Kahungu as the Respondent in the summons.

Upon being served, Loice Nyambura Ngugi duly entered appearance and filed a replying affidavit. She also filed notice of preliminary objection which was to the effect that she was neither the administrator of the estate of the deceased nor the administrator of the estate of Geoffrey Ngugi Kahungu (deceased) and could not therefore be made a party to these proceedings. The Respondent was of the view that the Applicant had no *locus standi* to prosecute the summons for revocation of grant where she is named as a Respondent. The Applicant on her part was of the view that the Respondent was the right party to be the Respondent in the case.

Prior to the hearing of the preliminary objection, counsel for the parties herein filed written submission in

support of their respective opposing positions. Mr. Njogu for the Respondent and Mr. Gachie for the Applicant further made oral arguments highlighting the written submission. This court has carefully considered the said submission. It has also considered the pleadings filed by the parties herein in support of their respective cases. The issue for determination by this court is whether the Respondent established that indeed the Respondent has been wrongly enjoined in these proceedings. As is clear from the earlier part of this ruling, upon the death of Geoffrey Ngugi Kahungu, no one has applied to this court to substitute him as the administrator of the estate of the deceased. The Applicant is aggrieved by the fact that the said Geoffrey Ngugi Kahungu petitioned this court for a grant of letters of administration intestate without disclosing the fact that she was also a beneficiary of the estate of the deceased.

From the pleadings filed herein, it is apparent that the Respondent is reluctant to be substituted as the administrator of the estate of the deceased because of a dispute over the suit parcel of land that is pending before the Land & Environment Division of the High Court (ELC. Case No.221 of 2011). For this court to determine the real issues in controversy i.e. the issue whether the Applicant was unlawfully excluded as a beneficiary of the estate of the deceased, it will be imperative that Geoffrey Ngugi Kahungu (deceased) be substituted as the administrator of the estate of the deceased. It will not do for the Respondent to litigate before this court by using a strategy of avoidance. The Respondent cannot argue that she is not the administrator of the estate of the deceased or of Geoffrey Ngugi Kahungu (deceased) yet she is benefiting from a property that the said Geoffrey Ngugi Kahungu inherited from the deceased. The preliminary objection therefore is misplaced in the circumstances of this case.

Upon the evaluation of the facts of this application, it was clear to this court that the Applicant has genuine grievance relating to her alleged exclusion as a beneficiary of the estate of the deceased. Her grievance must be ventilated on its merits. In that regard, it is upon the Respondent to choose whether she wants the court to substitute her as the administrator of the estate of the deceased in these proceedings or this court will have no alternative other than to appoint the Applicant to be the administrator of the estate of the deceased. The Respondent is granted seven (7) days to exercise the option given to her. If she fails to exercise the option, then the Applicant shall be at liberty to make an appropriate application to substitute Geoffrey Ngugi Kahungu (deceased) as the administrator of the estate of the deceased. It is clear from the foregoing that the preliminary objection lacks merit and hereby dismissed with costs.

DATED AT NAIROBI THIS 6th DAY OF NOVEMBER 2013

L. KIMARU

JUDGE