



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU
SUCCESSION CAUSE NO. 651 OF 2011
IN THE MATTER OF THE ESTATE OF PERIS WANJIRU MUCHIRI – DECEASED
AND
IN THE MATTER OF AN APPLICATION FOR THE REVOCATION OR ANNULMENT OF
LETTERS OF ADMINISTRATION INTESTATE ISSUED
ON THE 6TH JULY 2010 BY THE HONOURABLE SENIOR PRINCIPAL MAGISTRATE
COURT NAIVASHA
IN SUCCESSION CAUSE NO.144 OF 2009
BETWEEN
PETER MUCHIRI NJOROGE.....APPLICANT
VERSUS
HELLEN MUTHONI MUGANE.....PETITIONER
RULING

The applicant Peter Muchiri Njoroge filed an application dated **22nd November 2011** made under **Section 76** of the **Law of Succession Act** and **Rules 44 (1)** and (2) and **73** of the **Probate and Administration Rules**, seeking for the revocation and/or annulment of Grant.

Incidentally Grant of letters of administration intestate issued on **3rd December 2009** to the petitioner (Hellen Muthoni Mugane). The same were confirmed on **6th July 2010** by the Senior Principal Magistrate Naivasha vide SPM Succession Cause No.144 of 2009.

The applicant now seeks to be made a co-administrator and beneficiary of the Estate of the late Peris Wangui Muchiri and that orders do issue stopping the petitioner, her agents, assignees and/or servants from intermeddling, subdividing, transferring or from dealing in any way with the Estate of the deceased particularly Land reference **No.Naivasha/Mariagushu Block 1/915**.

The grounds upon which the prayers are sought are that:

1. The said Grant of letters of administration intestate was obtained fraudulently by concealment from the

court regarding existence of all the beneficiaries and dependants of the Estate of the deceased and more particularly the children of deceased's daughter (REGINA WAMBUI NJOROGE).

2. The documents in support of the application for Grant of letters were fraudulently obtained particularly the consent where a signature of George Irungu Njoroge was forged to indicate that he had given consent to the petitioner (Hellen).

3. The consent to making of a grant of letters intestate to persons of equal or lesser priority was not obtained from all the bonafide beneficiaries to the Estate as the petitioner concealed some material facts from the court.

4. The Grant of representation was made secretly despite the fact that it was gazetted, so if it is not revoked and/or annulled, the Respondent will be at liberty to unfairly proceed to transact with the property of the Estate of the deceased to the detriment and prejudice of the applicant and other dependants of the Estate.

In the supporting affidavit sworn by the applicant, he deposes that the deceased was his grandmother, whilst the petitioner is his aunt. His deceased grandmother had three daughters, namely REGINA WAMBUI NJOROGE (deceased), HELLEN MUTHONI MUGANE (the petitioner) and NURIA WAIRIMU ROBA GALMA – as shown by a letter marked PMN1 written by the chief of Naivasha East Location. The petitioner filed for grant of letters of administration intestate secretly and without the knowledge and consent of the applicant who left him and his siblings out – thus disinheriting them from a share of the deceased's estate.

He learnt about the petition after the petitioner's attempt to evict his sister RUTH WAIRIMU NJOROGE from their grandmother's homestead on grounds that she was in the process of selling the land (which seems to be the only asset in respect of deceased's estate).

The matter proceeded *ex parte* after the court confirmed that petitioner had been served with the application and all other relevant documents including the hearing notice. She did not file any reply to the application.

What I understand the applicant to be saying is that since his deceased mother was a daughter to the late PERIS, then her children ought to have been included in the administration of her estate and since this did not happen, then the Grant should be revoked and/or annulled. Section 71 2(d) at the proviso states that:

“In cases of intestacy, 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.”

The law governing intestacy is found in **Part V** of the **Law of Succession Act** and **Section 38** deals with a situation where an intestate has left a surviving child or children but no spouse such as the situation herein and states:

“Where an intestate has left a surviving child or children but not spouse, the net intestate estate, shall, subject to the provisions of Section 41 and 42 devolve upon the surviving child if there be only one, or be equally divided among the surviving children.”

This then means that the petitioner was entitled to apply for Grant of letters of administration intestate subject to conditions set out in Section 41 and which provides that:

“Where reference is made in this Act, to the “*net intestate estate*” or the residue thereof devolving upon a child or children, the property comprised therein shall be held in trust, in equal shares in the case of more than one child for all or any of the children of the intestate who attain the age of 18 years and for all or any of the issue of any child of the intestate who predecease him in which case the issue shall take through degrees, in equal shares, the share which their parent

would have taken had he not predeceased the intestate.”

So in this case the petitioner was duty bound to inform the court that the deceased had a daughter who had also died and who was survived by issues whose interest would then be taken into account. Indeed in **Machakos P & A No.13 of 1998, In the Estate of Peter Munik** (deceased), a grant was revoked because the petitioner had not disclosed some of the survivors of the deceased in her petition. The complaint here is not with regard to distribution or reasonable provision of the estate, so as to bring the matter under the provisions of Section 26 of the Act – it is that the petitioner having been made an administrator is now dealing adversely with the estate to the prejudice of all other beneficiaries.

Is the applicant entitled to apply for revocation of the grant? To answer this one needs to examine who is entitled to apply to administer the estate of a person who dies intestate. Section 66 of the Law of Succession provides *inter alia* that:

“ . . . as to the person to who grant of letters of administration shall, in the best interest of all concerned, be made . . . without prejudice . . . as a general guide, the following order of preference

(b) Other beneficiaries entitled on intestacy with priority to the respective beneficial interests as provided by part V.”

This then recognizes the operation of Section 38 and 41 which fall under Part V, which I have already referred to. I make a finding that petitioner concealed certain material facts which would have influenced the court’s findings as regards the confirmation of the grant. In terms of order of preference, certainly the petitioner takes priority, but in terms of fair administration of the estate she certainly has failed to live up to the expectations of the Act especially Section 38 and 41 of the Act, which then imposes a duty on me under Rule 73 of the Probate & Administration rules to ensure that ends of justice are met and that court process is not abused. In this regard then, I order that the confirmed grant be cancelled, and parties commence fresh proceedings for the confirmation of the grant – I think this will reopen a window for those left out to pursue their interest in the estate of the deceased – I rely on the decision by Waweru J, **In the matter of the Estate of John Kamau Gichuki** (deceased) Nrb High Court Succession Cause No.833 of 2003.

The petitioner shall bear the costs of this application.

Delivered and dated this 2nd day of March, 2012.

**H.A. OMONDI
JUDGE**