



REPUBLIC OF KENYA

IN THE HIGH OF KENYA AT NAKURU

SUCCESSION CAUSE 633 OF 2005

IN THE MATTER OF THE ESTATE OF THE LATE SOWE ARAP TITANY [DECEASED]

RUTH TAPUTANY APPLICANT

VERSUS

WILLIAM KIPLANGAT SIGILAI RESPONDENT

RULING

RUTH TAPUTANY (the applicant) has sought for revocation of grant of letters issued on 16th June 2006 in respect of the Estate of SOWE arap TITANY who died on 21st April 2005, on grounds that:-

- (a) The grant was obtained un-procedurally.
- (b) The grant was confirmed before six months had lapsed.
- (c) The applicant as the 2nd wife of the deceased should have been included in the petition as one of the administrators.
- (d) The deceased passed on while the applicant was out of the country for treatment so she could not lodge an objection at the time petition for grant was made.

The applicant states in the supporting affidavit that she was married to the deceased under Kipsigis custom. The grant of letters was issued in favour of her co-wife EMILY TITANY with an intention of barring her from inhering her late husband's estate.

The application is opposed and in a replying affidavit sworn by William Kiplangat Sigilai, he deposes that the grant was procedurally obtained after consultations between family members of the deceased and everyone was present. The distribution of the entire estate was done in accordance with the wishes of the deceased and no prejudice was occasioned to the applicant. The applicant gave *viva voce* evidence in which she described the Respondent as her co-wife's son and although he obtained grant of letters of administration, she seeks to be allowed to control the deceased's estate.

She lives on land parcel No.30 Ronda and says no one has threatened her to vacate, but the land has now been sold.

Her counsel Mr. Ogola submitted that the applicant and her daughter have been completely left out of the distribution of the estate, and the grant was issued before expiry of six months without any application.

The Respondent William recognises the applicant as his father's 2nd wife – his father had four wives. After the deceased's demise, the entire family met, and applicant's family was represented by her son DANIEL LANGAT because the applicant was away in America. At the time the applicant and Rebecca Kiptanui lived on plot No.30 Ronda. The family decided to sell the larger part of that plot, but left a portion for the applicant – this sale was so as to raise funds to pay for the deceased's hospital bills – at the time, the Title was in the deceased's name. He explains that the reason why the Applicant has not been given the Title for her portion is because it turned out that some other people also had Title to the same portion and Criminal Case No.2964 of 2009 was filed in that regard – a copy of the charge sheet was produced as D.Exhibit 1 showing that one ELIJAH KIPLAGAT has been charged with making a false document contrary to section 347(a) of the Penal Code. The particulars of the charge state that the fraudulent document is Title Deed No.Nku/Municipality Block 29/30. The Respondent would like the applicant to live on that land because it is her apportioned part. He showed this court a copy of the sale agreement to demonstrate that the land has already been sold to one NDIRANGU.

He further stated that the deceased had a fifteen acre farm which has been sub-divided into 5 acre portions. The third wife was given 5 acres although the person appearing as the beneficiary in her son named KIPNGENO SIGILAI and the applicant also has 5 acres from that parcel.

On cross-examination DW1 disclosed that his late father had four wives (1) GRACE TITANY (Respondent's mother) who is still living – she had three sons and one daughter, i.e. ELISHA, WILLIAM, LATE LINDA & SAWE KIPLANGAT – however the other children from this house are not listed as beneficiaries, it is only the Respondent who is shown to be getting 8 acres. No consent obtained from the other siblings was filed and Respondent explained that his sister Linda was left out because she is married.

The 2nd house is that of the applicant (RUTH) and comprises DANIEL KIPKOECH and REBECCA, but Ruth's name does not appear in the grant. According to the Respondent she is represented by her son Daniel. Again there is nothing in writing to show that the applicant and her daughter had consented to this arrangement and the Respondent admits:

“We did not discuss with them about being left out, but they will get land.”

The 3rd house is that of SARAH TAPUTANY – which has Daniel Kipngeno and Alice Rere – The 3rd wife's name does not feature anywhere. The 4th house of EMILY TITANY has four children but neither her name nor that of her children appears in the Grant. The Respondent is the sole administrator of his father's estate.

The Respondent says although the distribution may appear skewed, with him getting the largest portion that was done according to his father's wishes. He also confirms that he had negotiated for sale of the Ronda plot but could not sell due to lack of letters of administration. He also confirms that he obtained a confirmation of the grant before the lapse of six months, although he does not explain why.

The Respondent's brother (DW2) DANIEL KIPKOECH LANGAT (son of the applicant) supports Respondent's evidence that they met as a family and agreed on the mode of distribution. Basically he confirms what Respondent says that the applicant has not been left out in the distribution as she has been given 5 acres in Kericho (through him as the beneficiary) and a portion of the Ronda parcel has been left for her so Ndirangu was included in the grant of letters of administration because he had purchased a part of the Ronda property – not all the family members signed the sale agreement but DW2 says everyone in the family consented to the sale.

The applicant's counsel submits that the grant issued should be revoked because it was issued without consent of all the beneficiaries and particularly the applicant who was out of the country for treatment. He argues that the grant was obtained fraudulently and many of the beneficiaries were left out – meaning the Respondent concealed material facts when he appeared before the court.

It is further pointed out that FRANCIS NDIRANGU was included in the letters of administration before

he bought the said parcel of land – which parcel is subject of criminal prosecution pending in court. Counsel urges this court to consider and be guided by the decision in **The Estate of the late Stephen Macharia Murai (Nrb Succession Cause No.890 of 1998)**

It is also pointed out that although the sale of the property is being justified on grounds that the family needed to raise money to pay the hospital bills, not a single receipt or any other material evidence has been tendered to support that, and the fact that some of the beneficiaries shared out the balance of proceeds from the sale demonstrates that the sale may have been for other purposes other than payment of medical expenses.

The Respondent's counsel urges this court not to revoke the grant because there is evidence that the property in Ronda was divided among the four houses – that is not correct – the property which was divided among the four houses is the Kericho one – this Ronda property was sold to Ndirangu and the applicant was left with a portion which she is not even assured of because someone else claims the same parcel and has Title.

The Respondent's counsel further urges this court to find that there had been consultations with the other houses. **Section 76** of the **Law of Succession** provides that:

“A grant of representation whether or not confirmed may at any time be revoked or annulled if the court decides either on application by interested party or of its own motion.”

The evidence here clearly demonstrates that the applicant is an interested party by virtue of being the deceased's widow.

The second issue then is whether there is justification in revoking the grant. In the Text **“Law of Succession Mellows, Butterworth 1978 page 310”**, it is stated that:

“The court will not revoke a grant if there is any other way of achieving a proper result.”

This is fortified by an observation where in the text **“Law of Succession Testate & Intestate”**, Sir Donald Hughes Parry Sweet and Maxwell, 1961, pg 91 stated that:

“The court will not revoke a grant of Probate or Administration arbitrary. Thus it will not revoke a grant on account of the administrator's omission to bring an inventory or account or if the applicant has been guilty of laches and acquiescence in the first grant.”

It is conceded even by the Respondent that at the time of petitioning for grant of letters, the applicant who is an interested party was not notified, nor was she informed when the grant was made and confirmed. The Respondent was aware that she was out of the country and knew of her whereabouts. Consents of various persons aptly mentioned as beneficiaries was not obtained and where it is alleged to have been obtained there is no document filed to confirm that.

Section 51 (g) of the Law of Succession provides that:

“An application for grant of representation shall include in case of total or partial inventory, the names and address of all surviving spouses, children, parents, brothers and sisters of the deceased. . .”

Certainly this provision has not been met in this case. The only inference I can draw from this exclusion of names of beneficiaries is mischievous concealment – especially because EMILY TITANY'S house is left out completely, the applicant does not directly benefit from the distribution and the argument being used is that her son is benefitting on her behalf – may be if the court had been made aware of the existence of the other beneficiaries the outcome would have been different. The scenario obtaining her is what is contemplated by **Section 76 (b)** that a grant of representation whether confirmed may at any time be revoked if there has been concealment from the court of something material to the case.

The grant was confirmed before the lapse of six months, and according to the affidavit sworn by the Respondent, the reason for this was that he needed to sell a portion of land in KERICHO/KONGOTIK/598 to enable him pay fees for his two children. There was no mention of hospital bills or the land in Ronda, so the now turn around and claim that the land had to be sold to take care of medical expenses, is in my view being dishonest. From the foregoing there is no other way of achieving a proper result, I find that the grant made and confirmed on 16th June 2006 must be revoked and I so order. The respondent shall bear the costs of this application.

Delivered and dated this 11th day of September, 2012 at Nakuru.

H.A. OMONDI
JUDGE