



IN THE COURT OF APPEAL

AT ELDORET

(CORAM: MUSINGA, GATEMBU & MURGOR, JJ.A)

CIVIL APPEAL NO. 279 OF 2014

BETWEEN

DORCUS NYAMBURA NJENGA.....APPELLANT

AND

LYDIA WANGECHI MACHARIA.....RESPONDENT

(An Appeal from the order of the High Court of Kenya at Kitale, (J. R. Karanja, J.) dated 15th July, 2014

in

SUCCESSION CAUSE NO. 33 OF 2012)

JUDGMENT OF THE COURT

1. This is an appeal against the ruling of the High Court at Kitale (J. R. Karanja, J.) given on 15th July 2014 dismissing the appellant's application for revocation or annulment of grant of letters of administration issued to the respondent in respect of the estate of Rehoboam Mwiiri Muna.

2. The facts appear to be as follows. The deceased, Rehoboam Mwiiri Muna, died on 17th August 1991. His wife, Elizabeth Wangui Mwiiri, who subsequently died on 29th March 2009, and their daughter Lydia Wangechi Macharia, the respondent in this appeal, survived him. Lydia Wangechi Macharia is the mother of the appellant, Dorcas Nyambura Njenga (Dorcas). Dorcas claims that she was one year seven months when her mother, the respondent, abandoned her and her brother, David Mungai Mwiiri, after which she and her brother David went to live with their grandparents, Rehoboam Mwiiri Muna and Elizabeth Wangui Mwiiri (Elizabeth).

3. Dorcas claims that upon the death of Rehoboam, her grandmother, Elizabeth, was issued with a grant of letters of administration of her husband's estate that included title number Waitaluk/Kapkoi Block 9/Gutongorio/34; that when Elizabeth died on 29th March 2009, she (Dorcas) applied for, and was issued with the grant of letters of administration of the estate of Elizabeth on the basis of which the parcel of land Waitaluk/Kapkoi Block 9/Gutongorio/34 was transmitted to her and a title deed in respect thereof issued to her on 17th February 2012. She thereafter, as the owner of that property, sold and transferred it to one Isaac Njenga Kamau who became registered owner thereof and a title deed was issued to him on

22nd May 2012.

4. Notwithstanding the foregoing, Dorcas asserts that her mother Lydia fraudulently and by concealment of those facts applied for and was issued with a grant of letters of administration for the estate of Rehoboam Mwiiri Muna on 27th June 2012 which included parcel Waitaluk/Kapkoi Block 9/Gutongorio/34 that had already been transmitted to Dorcas and subsequently transferred to Isaac Njenga Kamau as indicated.

5. It was on that basis that Dorcas sought to have the grant issued to Lydia on 27th June 2012 revoked or annulled.

6. When dismissing the application by Dorcas for the revocation of the grant issued to Lydia, which was disposed of on the basis of the highly contested affidavits without oral evidence being taken, the court held that there was no proof that the property ever belonged to Elizabeth. The court expressed doubt that there was any grant of letters of administration issued to Dorcas in respect of the estate of Elizabeth on the basis of which the property would have been transmitted to her.

7. Dorcas complains that the learned Judge erred in dismissing her application for revocation of the grant in favour of Elizabeth.

8. Having heard and considered the submissions by Mr. D. Ingosi, learned counsel for the appellant, and Mr. P. N. Kiarie, learned counsel for the respondent, we are satisfied that the matters in controversy, pitting mother against daughter with respect to succession of the property, could only have been determined through oral evidence. An interrogation as to whether, there were in effect, two grants of letters of administration with respect to the estate of Rehoboam, is a matter on which oral evidence would have been useful. The omission to do so resulted in a miscarriage of justice. See the decision of this Court in **Zealia Wanjiru Moguku v Florence Wangechi Kabiri [2014] eKLR**.

9. We accordingly allow the appeal and set aside the ruling and the orders of the court given on 15th July 2014. We order and direct that the summons for revocation or annulment of grant of letters of administration issued to Lydia Wangechi Macharia on 27th June 2012 dated 30th August 2012 be heard afresh before a Judge of the High Court at Kitale other than J. R. Karanja, J.

10. Each party shall bear their own costs of this appeal.

Dated and delivered at Eldoret this 16th day February, 2017.

D. K. MUSINGA

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JUDGE OF APPEAL

S. GATEMBU KAIRU, FCI Arb

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JUDGE OF APPEAL

A. K. MURGO

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JUDGE OF APPEAL

*I certify that this is a true
copy of the original.*

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DEPUTY REGISTRAR