



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**SUCCESSION CAUSE NO. 1338 OF 1993**

*IN THE MATTER OF THE ESTATE OF BEDAN KUNGU KAGO*

*(DECEASED)*

**RULING**

The grant of letters of administration, intestate, to the deceased's estate was issued to 4 people, namely

1. John Njenga Kungu
2. Jane Wanjiru Kungu
3. Stephen Njenga Kungu
4. Charles Mureithi Kungu all sons of the deceased Bedan Kungu Kago.

The four subsequently had the Grant confirmed. The Certificate of Confirmation listed several properties distributed to the beneficiaries, including property known as **"PLOT NO. 412 AT THOME FARMERS NO 5** to Charles M. Kungu,

absolutely.

One Anne Njoki Njenga, the first born child of the deceased moved the court by Summons for Revocation or Annulment, stating inter alia,

***"That the grant was obtained fraudulently by making a false statement by the administrators that Plot No.412 at Thome Farmers No.5 Ltd, was one of the assets to be included in the inventory of the assets of the deceased's estate to be distributed, and concealed from the court the fact that the said plot No.412 was already legally owned by the applicant Anne Njoki Njenga, who was in possession of the title which include Share Certificate No.1071 and whose names appeared in the Register of Members of the said company, M/s Thome Farmers No. 5 Ltd".***

Attached to her affidavit was a share certificate No.1071, issued by THOME FARMERS NO.5 LTD, certifying that ANNE NJOKI NJENGA, of entry No.650 and 788, is the ***"Registered proprietor of shares eight thousand five hundred and fifty each, fully paid numbered as in the margin, in the above named company subject to the Regulation thereof"***.

Date of issue is 8th March, 1989.

The replying affidavit was sworn by Charles Muriithi Kungu, one of the administrators and also a beneficiary. He averred that the deceased had **“sincerely expressed his wishes of distribution of his assets including the asset namely plot No.412 Thome Farmers No.5 Ltd ”** and further at para 6,

**“That the deceased even gave me the receipts for his shares in Thome 5 Ltd entry No.650 which I know and not entry No.788 as stated by the applicant (annex and marked MK1 is a copy of the original receipt)”**.

The petitioner continued at para 8,

**“That it is true that I was declared the beneficiary of the plot as it was the wishes of the deceased, and what applicant alleges she acquired through purchase is false, and must be proved”**.

The petitioner Charles made a very serious allegation in para 12 of his affidavit when he averred,

**“That the applic ant is not a legitimate or bona fide owner and the registration is entry No.650, and not 788 as per the Certificate which is fraudulent and the same must be annulled and I be registered as the proprietor”**.

The objector filed a further affidavit, sworn on 1st November, 2002. The contents of this affidavit brought in fresh evidence to the effect that the deceased also bought shares in the same company, etc etc. The objector annexed further receipts showing that she paid for her own shares and was issued with a share certificate confirming that the land belonged to her and not her late father.

I have considered the contents of the various affidavits filed by the objector Anne Njoki Njenga, and one of the petitioners, who is also a beneficiary, named Charles Murithi Kungu.

As the record shows, both have a claim on the property – i.e. a piece of land comprised in “plot No.412, at Thome Farmers No.5”.

Apart from this piece of land, there is no other dispute in the deceased's estate.

My consideration of the affidavits on record reveal that they do not fully resolve the dispute over this property. Perhaps further evidence is required from other parties who are not parties to the deceased's estate.

Because the grant is already confirmed I cannot move to make orders under Rule 41(1) sub-rules 3 and 4 of the Probate and Administration Rules.

In the circumstances therefore, I move to REVOKE the Grant issued to the 4 petitioners, namely

1. John Njenga Kungu,
2. Jane Wanjiru Kungu,
3. Stephen Njenga Kungu,

4. Charles Mureithi Kungu.

As no objection was raised about the 4 being administrators of the deceased's estate, I direct that a new Grant of Letters of Administration to the deceased estate be issued to them ONCE MORE.

The four are directed to move the court for Confirmation of Grant using form 108 the petition, and form 9 the affidavit.

The four petitioners can adopt the same mode of distribution as before, as it is not in dispute, however, they **MUST LEAVE OUT** and OR exclude from the schedule of distribution the property known as "**PLOT NO.412 AT THOME NO.5**" which had been distributed to **CHARLES K. KUNGU**.

This property "**Plot No.412 at Thome No.5**" will be governed by the Provisions of Rule 41(1) sub-rules 3 and 4, which state as follows at sub rule 3,

***"Where a question arises as to the identity, share or estate of any person claiming to be beneficially interested in, or of any condition or qualification attaching to such share or estate which cannot at that stage be conveniently determined, the court may prior to confirming the grant, but subject to the provisions of section 82 of the Act, by order appropriate and set aside the particular share or estate the property comprising it to abide the determination of the question in proceedings under Order XXXVI, Rule 1 of the Civil Procedure Rules and may thereupon, subject to the proviso to Section 71(2) of the Act, proceed to confirm the grant"***.

And sub rule 4 of 44(1) which reads,

***"In proceedings under sub rule 3 above, unless the court otherwise directs, the personal representative of the deceased shall be the applicant seeking determination of the question, and the person claiming to be so beneficially interested together with the residuary legatee or other person to be appointed by the court to represent the residuary estate shall be the respondents; and the court in such proceedings shall give all necessary directions relative to the prosecution thereof including the safe-guarding of the share or estate so appropriated and set aside, and the provision of costs"***.

In the originating summons to be filed therefore, I direct that the applicant be Charles Mureithi Kungu, who is one of the personal representatives of the deceased and also a beneficiary. Being one of the personal representatives, I believe he will safe guard the "**share or estate as appropriated and set aside**"

Finally, I direct that the objector, Ann Njoki Njenga, be the respondent in the suit to be filed by the personal representative and beneficiary. The rest of the estate should proceed to confirmation, as stated earlier in this Ruling.

If, at the conclusion of the Originating Summons, the court decides that the property in question belonged to the deceased's estate, then the 4 personal representatives of the deceased should once more apply for confirmation of this property as the deceased's and proceed to distribute it to Charles Mureithi Kungu. If, on the other hand Anne Njoki Njenga satisfies the court that she bought the property and therefore it belongs to her, then the property will be given to her.

These are the orders of the court.

Dated at Nairobi this 19th day of December, 2002.

**JOYCE ALUOCH**

**JUDGE**



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