



REPUBLIC OF KENYA



KENYA LAW
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**Mugambi v Kinoti (Succession Cause 3 of 2018)
[2024] KEHC 10732 (KLR) (29 August 2024) (Ruling)**

Neutral citation: [2024] KEHC 10732 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT CHUKA
SUCCESSION CAUSE 3 OF 2018**

LW GITARI, J

AUGUST 29, 2024

IN THE MATTER OF THE ESTATE OF THE LATE JOHN NJERU MUCEE (DECEASED)

BETWEEN

AGNES KANJIRU MUGAMBI APPLICANT

AND

SALOME KANANA KINOTI RESPONDENT

RULING

1. This matter relates to the Estate of John Njeru Mucee, (deceased) who died intestate on 23/10/2017. The co-administrator/respondent petitioned for the grant of letters of administration in the Estate of the deceased who is her husband. The grant was issued on 8/6/2018 and was later confirmed on 5/12/2018 and a certificate of confirmation of grant was issued. The properties forming the estate of the deceased were listed as follows:-

Land Parcel No. South/Tharaka /Tunyai 'A'/2721

Land Parcel No. South /Tharaka/Tunyai 'A' 2071

Land Parcel No. South/Tharaka/Tunyai'A'/1093

Land Parcel No.South/Tharaka/Marimanti/2105

Land Parcel No.Kathwana/2471

Motor vehicle Registration No.KNB 818X

Motor vehicle Registration No.KAN 278C

Motor cycle Registration No.KMCA 193D

Account No.0111xxxxxxxx- Co-operative Bank



Death Gratuity

2. The applicant filed a summons for revocation of grant issued to Salome Kanana Kinoti on the ground that the administrator had failed to disclose that the deceased had another wife, Agnes Kanjiru Mugambi who was also left out in the distribution of the Estate of the deceased. The court issued inhibition orders against any transactions on all the properties which were listed on the certificate of confirmation of grant. The order was issued on 26/9/2019 pending the hearing and determination of the summons for revocation of grant dated 23/9/2019. Subsequently the summons for revocation of grant was heard and determined. The grant issued to Salome Kanana Kinoti was revoked on 8/6/2018. The court ordered that a fresh grant be issued to Salome Kanana Kinoti and Agnes Kanjiru Mugambi. The court directed that they should move the court with summons for confirmation of grant within thirty (30) days or else Salome to file the summons and the 2nd administrator to file affidavit of protest. The parties complied and the court directed that the protest be heard by way of oral evidence in court. In the meantime the protestor discovered that the 1st administrator had transferred some of the properties comprising the estate of the deceased in the revoked grant. The properties are Kathwana/2474 and the motor vehicles registration number KAN XXXX and KBN XXXX. The 1st administrator conceded that indeed some of the properties had been transferred but that they were transferred before the grant was revoked and before the inhibition order was issued by the court and are therefore justified and should be allowed to remain.
3. The matter pending before this court is the summons dated 25/9/2023 where the protestor is seeking an order that the transmission in respect of Land Parcel No.Kathwana/2474 to the Administrator Salome Kanana Kinoti to hold in trust for herself and CNN (minor), RMN (minor), SM (minor), JLK (minor) be annulled and cancelled and the parcel of land to revert to the estate of the deceased. She also seeks an order that the vehicles which were transferred to the Administrator and Nesmart Investment Limited be annulled and cancelled and revert back to the estate of the deceased.
 1. The respondent has opposed the application and contends that the properties were transferred under a lawful grant which had not been revoked. That the said motor vehicle KAN 278C was sold long before the grant was revoked. That the motor vehicle KBN XXXX was transferred in her name before the caveat was placed prohibiting the transfer she avers that none of the properties were transferred after orders of 26/9/2019. The summons was canvassed by way of written submissions. The applicant submits that the respondent has not appealed against the ruling that revoked the grant and order that a fresh grant be issued to the applicant and the respondent. She submits that the transactions that were undertaken under the revoked grant were a nullity. It is further submitted that under Rule 73 of the Probate and Administration Rules the High Court has inherent jurisdiction to make such orders as may be necessary for the ends of justice and to prevent the abuse of the court process. That the court has power to cancel the transfers of the vehicles and the piece of land. It is further submitted that the interested parties cannot hide under Section 93 of the Law of Succession as the section cannot validate unlawful acts. He relies on In Re Estate of Christopher Jude Adela (2009) eKLR where it was stated that the Section 93 of the Act cannot validate unlawful acts. He prays that the application be allowed.
 2. For the respondent it is submitted that none of the properties were sold after the court issued inhibition orders. That the properties were lawfully sold, transmitted or transferred to either the respondents names and or to third parties among them the Interested Party herein. The respondent has urged the court to consider two issues-



1. Whether Rules 44(1) and 73 of the Probate and Administration Rules makes provisions for the orders sought.
2. Whether under Section 93 of the Law of Succession Act the relief sought in the summons are available.
4. The respondent submits that the application lacks merits. For the interested party, it is submitted that he bought the motor vehicle KAN XXXX Tipper Lorry before the inhibition orders were issued on 26/9/2019. He submits that the vehicle was first sold to Ouma Omwono Cyrack who purchased from Salome Kanana Kinoti and he in turn sold it to him. That the respondent had a grant issued to her on 5/12/2018 and a copy of the record showing that the respondent was the rightful owner. That he exercised due diligence to satisfy himself that the seller had capacity to sell. The 3rd party relies on in Re-Estate of Veronica Njoki Wakigito (2013) eKLR where the court stated that the authority to sell a deceased's property emanates from the grant of representation. He submits that he was a lawful purchaser. That the applicant has not proved the allegations of fraud against him. He relies on In Re Estate of John Gichia Macharia (Deceased) (2021) eKLR. He prays that the application be dismissed.
5. I have considered the application and the submissions by the applicant, the replying affidavits and the submissions. The issue which arises for determination is whether the application has merits. The applicant has averred that the properties in question that is Land Parcel No. Kathwana/2774, and the motor vehicle KAN XXXX were sold in contravention of the court orders issued by this court on 26/9/2019. However the 1st administrator respondent has proved that the said properties were sold before the order of inhibition was issued. They were therefore not sold in violation of the court orders. The respondent had obtained a grant of letters of administration in the estate of her late husband and the said grant was confirmed. A certificate of confirmation of grant was issued and she distributed the estate including the two properties in dispute to herself. Section 93 of the Law of Succession Act provides as follows:
 - (1) All transfers of any interest in immovable or movable property made to a purchaser either before or after the commencement of this Act by a person to whom representation has been granted shall be valid, notwithstanding any subsequent revocation or variation of the grant either before or after the commencement of this Act. (2) A transfer of immovable property by a personal representative to a purchaser shall not be invalidated by reason only that the purchaser may have notice that all the debts, liabilities, funeral and testamentary or administration expenses, duties, and legacies of the deceased have not been discharged nor provided for.”
6. The section provides the sale of immovable or movable property by a grant holder and which grant is subsequently revoked shall be valid notwithstanding any subsequent revocation. The provision is couched in mandatory terms. The section provides that the transfer is valid notwithstanding any subsequent revocation or variation of the grant. The section aims to protect innocent purchasers for value of properties constituting estates of deceased persons even where the grant is subsequently revoked.
7. This is based on the fact that the grant of representation to the estate of a deceased person gives the holder of the grant authority to deal with the properties of a deceased person. Thus a revocation of grant does not invalidate a transfer of movable property where the person was an innocent purchaser. I find that under Section 93 of the Law of Succession Act the actions by the respondent to transfer the property to herself and to sell the motor vehicle to the Interested Party long before the grant was revoked is valid. The order revoking the grant which was issued by this court did not invalidate the transfers of the said properties as no orders were issued to cancel the transfers and revert the properties to the estate.



8. The applicant has brought this application under Rule 44 of the [Probate and Administration Rules](#). The Rule provides as follows:-

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- (1) Where any person interested in the estate of the deceased seeks pursuant to the provisions of section 76 of the Act to have a grant revoked or annulled he shall, save where the court otherwise directs, apply to the High Court for such relief by summons in Form 107 and, where the grant was issued through the High Court, such application shall be made through the registry to which and in the cause in which the grant was issued or, where the grant was issued by a resident magistrate, through the High Court registry situated nearest to that resident magistrate's registry.
- (2) There shall be filed with the summons an affidavit of the applicant in Form 14 for revocation or annulment identifying the cause and the grant and containing the following particulars so far as they are known to him-
 - (a) whether the applicant seeks to have the grant revoked or annulled and the grounds and facts upon which the application is based; and
 - (b) the extent to which the estate of the deceased has been or is believed to have been administered or to remain unadministered, together with any other material information.
- (3) The summons and affidavit shall without delay be placed by the registrar before the High Court on notice in Form 70 to the applicant for the giving of directions as to what persons (if any) shall be served by the applicant with a copy of the summons and affidavit and as to the manner of effecting service; and the applicant, upon the giving of directions, shall serve each of the persons so directed to be served with a notice in Form 68, and every person so served may file an affidavit stating whether he supports or opposes the application and his grounds therefore.
- (4) When the persons (if any) so directed to be served (or such of them as the applicant has been able to serve) have been served with a copy of the proceedings, the matter shall be placed before the High Court on notice by the court to the applicant and to every person so served, and the court may either proceed to determine the application or make such other order as it sees fit.
- (5) Where the High Court requires that notice shall be given to any person of its intention of its own motion to revoke or annul a grant on any of the grounds set out in section 76 of the Act the notice shall be in Form 69 and shall be served on such persons as the court may direct.”

9. The rules simply provides for the manner in which a party seeking revocation of grant under Section 76 of the [Law of Succession Act](#) may approach the court. The rule is specific on its application; it is not a rule of general application. The applicant is not seeking revocation as the court has already ordered the revocation of the said grant. The rule is therefore not applicable to the application which the applicant has filed. Rule 73 of the Probate and Administration Rules deals with inherent powers of the court. The rule cannot be invoked while seeking the present orders in view of the Section 93 of the [Law of Succession Act](#).

10. The applicant has filed a protest which is yet to be heard and determined. I agree with the authorities cited by the applicant and I entirely agree that this court has powers to order the cancellation of title



deeds and revert the properties to the estate where it is proved that the transfer was fraudulent and was marred by irregularities and illegalities or where the person dealing with the estate was not a beneficiary.

11. I find that the properties were transferred and sold by the administrator when she had a grant issued by this court and the actions by the respondent are shielded by Section 93 of the *Law of Succession Act*. The applicant has filed a protest and it would be expedient to hear and determine the protest before the court can determine whether to cancel the said transfers. I find that the application is not properly before this court. I dismiss it with costs.

DATED, SIGNED AND DELIVERED AT CHUKA THIS 29TH DAY OF AUGUST 2024.

L.W. GITARI

JUDGE

