



REPUBLIC OF KENYA



**Njue v Nyamu (Miscellaneous Application 6 of 2013)
[2023] KEHC 2792 (KLR) (31 March 2023) (Judgment)**

Neutral citation: [2023] KEHC 2792 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERUGOYA
MISCELLANEOUS APPLICATION 6 OF 2013**

LW GITARI, J

MARCH 31, 2023

BETWEEN

CYRUS WAMBOKA NYAGA NJUE APPLICANT

AND

LUCY KANYUA NYAMU RESPONDENT

JUDGMENT

1. This succession cause relates to the estate of the late Murage Kathinja (the “deceased”) who died intestate on August 18, 1999. The Respondent is the widow of the deceased. She moved the SPM’s Court at Kerugoya by filing a petition seeking a grant of letters of administration to administer the estate of the deceased. She obtained the grant which was issued to her on August 13, 2008 and subsequently was confirmed on March 6, 2009.
2. Vide the summons application dated April 26, 2010, the Applicant sought for the revocation and/or annulment of the aforesaid grant on the grounds that:
 - a. That the proceedings to obtain the grant were defective in substance.
 - b. That the grant was obtained fraudulently by the making of a false statement or by the concealment from the court of something material to the case.
3. The summons application for the revocation of grant was supported by the affidavit sworn by the Applicant on April 26, 2010. He deposed that he is the youngest brother of the deceased herein. That the deceased was registered as the proprietor of parcels of land nos. Ngariama/Rungeto/381 and Mwea/Ngucwi/37 which formed part of his estate to hold in trust for himself as well as his siblings Muriithi Nyaga alias Kuria Kathinja (allegedly of unsound mind), Peter Gicheru Kathinja, and the Applicant. Further, the Applicant deposed that he was born on land parcel no Ngariama/Rungeto/381 and that he has been utilizing a portion of the said land measuring 1.5 Acres to this date while Muriithi Nyaga alias Kiura Kathinja has developed on a portion that measures 0.5 Acres out of



- the same parcel of land. In addition, he states that their parents as well as the first wife of the deceased were buried in the same parcel of land.
4. According to the Applicant, the family members, him included, developed parcel no Mwea/ Ngucwi/37 which is allegedly occupied by Muriithi Nyaga alias Kiura Kathinja. That they also built up Coffee Pulp Station (private coffee factory) vide Coffee Board of Kenya Registration Number AJ 0219 and a Commercial Coffee Nursery vide Coffee Board of Kenya Registration Number KIRI/CN/014. The Applicant thus alleges that there is a continuing trust in this case which the Respondent concealed from the court when she filed the succession cause and further that she did not inform him and the other beneficiaries of the estate of the proceedings. Finally, the Applicant deposed that the aforesaid confirmed grant should be revoked as the court which issued and confirmed the same did not have the jurisdiction over an estate whose gross value exceeded Kshs 100,000/=.
 5. In opposing the application for revocation of grant, the Respondent filed an affidavit sworn on February 18, 2011. She deposed that the estate of deceased to whose these proceedings relate was LR No Ngariama/Rungeto/381 and Mwea/Ngucwi/37. She denied that the deceased was holding the land in trust for the Applicant or any other person. She further denied the allegation that the deceased held any of the properties jointly with any other person. She maintained that all developments on the suit property belonged to the deceased and as such, she was not under any duty to inform the Applicant that she was filing the succession proceedings.
 6. The application was heard by way of viva voce evidence.
 7. PW1 was Cyrus Wamboka Nyaga, the Applicant herein and the brother to the deceased. He adopted his witness statement dated November 16, 2017 as his evidence and produced the annexed list of documents as his exhibits. It was his testimony that the Respondent was working for the deceased before she started living with him. That the two got two children. It was his testimony that he was seeking the revocation of the subject grant because him and his mother contributed to purchase LR No Ngariama/Rungeto/381 from his half brother. That at the time, women were not getting identity cards and so his mother opted to have the land registered in the name of the deceased. That both his parents died and were buried on the same land and that currently, him, his brother, and the Respondent are utilizing the land.
 8. It was further his testimony that the deceased balloted for the parcel of land known as Mwea/ Ngucwi/37 and that the Applicant uses part of it and the Respondent leased a portion of it. It was his claim that the land was meant for the family. As for Plot No 22B Githure Market, it was the Applicant's claim that the family contributed money to buy the plot after the deceased's first wife died. That the plot was registered in the name of the deceased as they agreed that he would add the Applicant money to buy a plot in the urban centre. It was thus his contention that the subject grant should be revoked as he was never made aware of the succession proceedings. That the Respondent became hostile to him and that is when he came to find out that the properties had been transferred in her name.
 9. PW2 was Kariithi Njeru. He stated that he was the deceased's neighbour in Ngucwi. He however did not know the land parcel number. It was his testimony that the Applicant uses one part of the land for cultivation. According to him, the Respondent does not use the land. On cross examination, he maintained that he did not know the Respondent as the deceased's wife had died and admitted that he never attended the meeting when the deceased gave the land to the Applicant.
 10. The Respondent testified as DW1. She maintained that the properties indicated in the subject grant were wholly owned by her deceased husband. That as per the green card, LR No Ngariama/ Rungeto/381 was bought by the deceased. According to her, the deceased bought the land at Kshs 5,000/=. She stated that she filed these proceedings and the same were gazetted on July 11, 2008. That



she filed the same openly and everyone knew of the same but no one came forward with a claim on the estate.

11. DW2 was Josphat Munene Mukono. He stated that the deceased was his cousin and confirmed that the Respondent was the wife to the deceased. According to him, the Applicant only intends to grab land from the Respondent despite the fact that he owns his own land in Rungeto location. He stated that the deceased acquired LR No Ngariama/Rungeto/381 and Mwea/Ngucwi/37 through purchase. That the parcels of land are not family land. He thus supported the Respondent's claim that the suit properties belong to the Respondent.

Issues for determination

12. I have considered the summons for revocation of grant dated April 26, 2010. I have also considered the affidavits filed by the parties, the testimonies of their witnesses as well as the exhibits produced. Finally, I have considered the submissions made by the parties. The main issue arising for determination is whether the grant issued to the Respondent on August 13, 2008 and confirmed on March 6, 2009 should be revoked.

Analysis

13. The law on revocation of a grant is provided under Section 76 of the Act and Rule 44 of the Probate and Administration Rules. Section 76 of the Act provides as follows:

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

- a. that the proceedings to obtain the grant were defective in substance.
 - b. that the grant was obtained fraudulently by the making of a false statement or by the concealment from court of something material to the case.
 - c. that the grant was obtained by means of an untrue allegation of the fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently.”
14. For the court to order revocation of grant, a party must prove that:
 - a. Proceedings to obtain the grant were defective in substance;
 - b. The grant was obtained fraudulently by the making of a false statement or concealment from court of something material to the case;
 - c. That the grant was obtained by means of untrue allegations.
 15. The grant that the Applicant is seeking to revoke was issued on August 13, 2008. The Applicant alleges that the proceedings to obtain the grant were defective in substance and that the grant was obtained fraudulently by the making of a false statement or by the concealment from the court of something material to the case.
 16. The Applicant (PW1) on cross examination stated that he was born in 1958 and LR No Ngariama/Rungeto/381 was bought in 1971. This means that he was about 14 years old when the said parcel of land was bought. Further, he stated that he had no evidence to prove that they contributed to the purchase of the land. His claim that he contributed to the purchase of the land is therefore doubtful to



say the least. This is also so because by the time the deceased died in 1999, the Applicant was about 41 years and yet he had not made any effort to have his alleged share of the suit land transferred to his name.

17. On the contention that the Applicant did not know when the succession was filed, the Respondent has provided a copy of the gazette notice proving that there was publication of the cause. This means that she followed the right procedure in instituting the proceedings and yet no objections were raised. Therefore, the Applicant's claim that he was not made aware of the filing of the proceedings fails. In the end, the Applicant has failed to substantiate his claim over the estate.

Conclusion

18. From the foregoing, I find that the summons for application dated April 26, 2010 is not merited.

I order that:-

1. The summons dated April 26, 2010 is dismissed.
2. Costs to the Respondent.

DATED, SIGNED AND DELIVERED AT CHUKA THIS 31ST DAY OF MARCH 2023.

L.W. GITARI

JUDGE

31/3/2023

The Judgment has been read out in open court.

L.W. GITARI

JUDGE

31/3/2023

