



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NYAHURURU**

**SUCCESSION CAUSE NO. 12 OF 2019**

**IN THE MATTER OF THE ESTATE OF THE LATE EPHARUS NYAMBURA NDUATI (DECEASED)**

**MARY NYAMBURA MANASSEH.....PLAINTIFF**

**-VERSUS-**

**PAUL N. NDUATI.....1<sup>ST</sup> RESPONDENT**

**CAROLINE WANJIKU KAMAU.....2<sup>ND</sup> RESPONDENT**

**-AND-**

**TITUS KARIKO NGATIA.....1<sup>ST</sup> INTERESTED PARTY**

**TABITHA WARINGA NDUNG’U.....2<sup>ND</sup> INTERESTED PARTY**

**RULING**

1. By a Judgment dated 16<sup>th</sup> December, 2021, the court ordered that:

*i. The certificate of confirmation of grant is revoked and set aside.*

*ii. The titles arising from subdivision of Nyandarua/Ojoro Orok Salient/1881 are cancelled and title reverts back to the name of the deceased awaiting the parties to agree on mode of distribution and/or court to determine same.*

*iii. The parties to file consent on distribution within 30 days from dates herein or file separate proposals on distribution within same span in default court to go ahead and make verdict with or without parties input.*

*iv. Parties to bear their costs.*

**SUBMISSIONS:**

2. The parties were directed to put proposed mode of distribution within 30 days on consent and thereafter submissions but only petitioner put submissions.

**PETITIONER’S SUBMISSIONS:**

3. It is submitted that the sale agreement entered into between the deceased and the Applicant’s husband lacks validity for want of the Land Control Board’s consent. That under **Section 6 and 7 of the Land Control, Act Cap 302**, the only remedy available to the Applicant is for a refund of the purchase price.

4. The sale agreements are dated 6<sup>th</sup> June, 1994, 28<sup>th</sup> June, 1994 and 24<sup>th</sup> February, 1995 and at the time of the deceased’s death on the 8<sup>th</sup> May, 2005, the Land Control Board’s consent for sale and transfer had not been sought for or obtained rendering the sale null and void.

5. It is contended that, the Applicant’s claim is also time barred by dint of **Section 7 of the Limitation of Actions Act Cap 22** and matters falling under the **Law of Succession**, are not exempted from the Act.

6. The Applicant's claim is statutory time barred and the 2 acres of land sought based on sale agreements executed between the year 1994 and 1995 cannot be enforced.
7. The Petitioners have offered to refund the purchase price in their capacity as the administrators and it is therefore thus the grant be confirmed as per their affidavit.
8. The parties have filed and exchanged their proposals.
9. The only point of departure is that whereas the purchase side Mary Nyambura Manasseh proposes the 2 acres purchased be allocated to her side, the Paul N. Nduati side proposes same 2 acres to be retained by him.
10. The court notes that all the other allocations are replica of one another thus no contest thereof.
11. On the purchased 2 acres and occupied by Purchaser/Applicant side, the court notes that the same rendered the revocation of grants in the instant matter as the petition had concealed the fact that same were purchased and were sold by deceased to the buyer and possession given thereof.
12. The court in **paragraph 38** of the judgment of 16<sup>th</sup> December, 2021 stated:

***“In light of the above, I invoke the inherent powers of this court granted under Article 159 of the Constitution and Section 76 of the Law of Succession Act and make the order to revoke the letters of grant of administration issued to the Petitioner and subsequent confirmation as it was obtained fraudulently by the making of false statement or by the concealment from court of something material to the case particularly in relation to the sale of the 2 acre portion of Nyandarua/Oljoro Orok Salient/1881 belonging to the Applicant's husband.”***

13. It is trite law that, if there were such agreements as in the instant matter, then their interests can be legitimately taken into account in distributing the estate of the deceased. In dealing with a similar matter, Makhandia, J (as he then was) in **Titus Muraguri Warothe & 2 Others v Naomi Wanjiru Wachira Nyeri HCSC No. 122 of 2002** held that:

***“In the instant case the applicants are purchasers for value of a portion of the deceased's estate comprised in the grant. There is uncontested and unchallenged evidence that before the deceased passed on he had sold various portions of land to the applicants and he had been fully paid and had indeed put each one of the applicants in possession of their respective portions that they had purchased. The applicants have to date been in continuous and uninterrupted occupation of those portions and have extensively developed them. The respondent who is the wife of the deceased was all along aware of these transactions involving her deceased husband and the applicants. The deceased, pursuant to the sale agreement and as required by law made an application to the Land Control Board for necessary consents to the subdivision of the said parcels of land and subsequent transfer to the applicants of the portions they had purchased. However, he passed on just before he could attend the board meeting. Yet the respondent knowing very well the interest of the applicants in the suit premises when she petitioned for the grant of letters of administration and later had the same confirmed completely ignored that interest of the applicants in the suit premises...Had the applicants been made aware of the application for the confirmation by being served they would have brought to the fore their aforesaid interest in the estate of the deceased and the resultant grant would have taken care of these interests. Further, had the respondent been forthright and candid and included the applicants as beneficiaries of a portion of the estate of the deceased as purchasers for value, the court in confirming the grant would have taken into account their interest in the estate of the deceased. As it is, therefore, the grant was obtained fraudulently by the making of a false statement and concealment from court of something material to the cause. The respondent knew of the applicants' interest in the estate of the deceased yet she chose to ignore them completely in her petition of letters of administration intestate. She also ignored them completely when she applied for confirmation of the grant. In her distribution proposal she completely ignored the part of the estate that was purchased by the applicants yet she was aware of the purchase as she was present when the transactions were concluded. In any event the applicants were put in possession of their portions of the suit premises by the deceased before he passed on and with full knowledge of the respondent and since then they have been in continuous and uninterrupted occupation of the suit premises which they have extensively developed over the years.”***

14. Thus the court finds that the only rational, equitable and fairest way to resolve the instant matter is to confirm grant as proposed by Paul Nduati Kamau but reserve the 2 acres in purchaser's SIDE possession to await ELC court to determine whether the want of Land Control Board consent and limitation of time on claim would have given rise to adverse possession right or if not, the extent of refund and or compensation available to the claimants. Thus the court makes orders: The distribution will be;

***i. (a) Paul Nduati Kamau – 3 acres***

***(b) Mary Nyambura Manasseh – 2 acres retain possession until ELC court decides otherwise.***

***(c) Titus Kariko Ngatia – 0.625 acres***

***(d) Joseph Iribe Kariuki – 0.75 acres***

***(e) David Kamau Karuru – 0.5 acres***

***ii. The ELC Case to be filed within 45 days and served in default proposal by Paul Nduati Kamau to take effect in totality.***

*iii. Those are the orders of the court.*

**DATED AND SIGNED AT NYAHURURU THIS 17TH DAY OF FEBRUARY, 2022.**

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**CHARLES KARIUKI**

**JUDGE**