



REPUBLIC OF KENYA



In re Estate of Patrick Gikore Mwitari (Deceased) (Succession Cause 442 of 2004) [2022] KEHC 3267 (KLR) (23 June 2022) (Ruling)

Neutral citation: [2022] KEHC 3267 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
SUCCESSION CAUSE 442 OF 2004
TW CHERERE, J
JUNE 23, 2022**

IN THE MATTER OF THE ESTATE OF PATRICK GIKORE MWITARI (DECEASED)

BETWEEN

JAMES MWANGI WANJOHI APPLICANT

AND

JOYCE NJOKI GIKORE 1ST RESPONDENT

ERICK KITHINJI GIKORE 2ND RESPONDENT

RULING

Introduction

1. Deceased's died on May 1, 2019. The Administrators who are widow and father to the deceased respectively applied for letters of administration in which they stated that the deceased was survived by the following:
 - 1) Joyce Njoki Gikore (Widow)
 - 2) Erick Kithinji Gikore (Son)
 - 3) Kevin Mwirigi Gikore (Son)
 - 4) Loise Kendi Gikore (Daughter)
2. Letters of administration were issued to the administrators on December 15, 2004. Subsequently, an application for confirmation of the grant was made in which James Mwangi and Titus Munene were identified as purchasers. By a Certificate of Confirmation of Grant dated June 3, 2014, the deceased's estate comprised in LR No Marmanet/North Rumuruti Block 2 (Ndurumo) 9 was distributed as follows:



- i. Titus Munene 10 acres
- ii. Joyce Njoki and James Mwangi 5 acres jointly

Summons

3. By summons for revocation dated October 1, 2021 and filed on 24.01.22, Applicant seeks the following orders that; -
 1. Letters of administration issued on December 15, 2004 and the Certificate of Confirmation of Grant dated June 3, 2014 be revoked
 2. That the estate be redistributed afresh and he be given 5 acres
 3. Costs be provided for

Applicant's Case

4. The Applicant's case is contained in his affidavit sworn on 01st October, 2021, further affidavit sworn on May 16, 2022 and submissions filed on 24.05.2022 is to the effect that he bought 5 acres of deceased's land from the deceased but he passed on before it was transferred to him. In support of his claim, applicant had annexed among other documents a sale agreement for 5 acres of the suit signed between him and the deceased on January 13, 1997 which discloses that Applicant paid the deceased Kshs 50,000/- and remained with a balance of Kshs 100,000/- which he says was offset with a poshomill. Additionally, Applicant has annexed consent of the Land Control Board and mutation forms for partitioning of deceased's land.

Respondents' Case

5. Respondents' case is contained in a replying affidavit sworn by the Respondents on March 8, 2022 and submission filed on May 17, 2022 in which they contend that the intended sale by the deceased to the Applicant was rescinded by the deceased during his lifetime and that the Applicant who is not a beneficiary of deceased's estate has no right to seek revocation of the grant herein.

Analysis and Determination

6. I have considered the application in the light of the affidavits and submissions filed on behalf of both parties and the issue for determination is whether a case has been made for revocation of the grant of letters of administration issued on December 15, 2004 and the Certificate of Confirmation of Grant dated June 3, 2014.
7. 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 the court of something material to the case;
 - (c) that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently;



- (d) that the person to whom the grant was made has failed, after due notice and without reasonable cause either-
- (i) to apply for confirmation of the grant within one year from the date thereof, or such longer period as the court has ordered or allowed; or
 - (ii) to proceed diligently with the administration of the estate; or
 - (iii) to produce to the court, within the time prescribed, any such inventory or account of administration as is required by the provisions of paragraphs (e) and (g) of section 83 or has produced any such inventory or account which is false in any material particular; or
- (e) that the grant has become useless and inoperative through subsequent circumstances.”
8. The Court of Appeal in *Jamleck Maina Njoroge v Mary Wanjiru Mwangi* [2015] eKLR stated that;
- “The circumstances that can lead to the revocation of grant have been set out in Section 76 *Law of Succession*. For a grant to be revoked either on the application of an interested party or on the court’s own motion there must be evidence that the proceedings to obtain the grant were defective in substance, or that the grant was obtained fraudulently by making of false statement, or by concealment of something material to the case, or that the grant was obtained by means of untrue allegations of facts essential in point of law.”
9. The Respondents are widow and son of the deceased and were therefore rightly appointed administrators of his estate and letters of administration were lawfully issued to them.
10. Whereas Respondents dispute that Applicant bought 5 acres, at the time of making the application for confirmation of the grant, they acknowledged him and one Titus Munene as purchasers. On that basis they proposed as is demonstrated by the Certificate of Confirmation of Grant dated 03rd June, 2014 that 5 acres of deceased’s estate comprised in LR No Marmanet/North Rumuruti Block 2 (Ndurumo) 9 was to be distributed to Joyce Njoki (1st Respondent) and James Mwangi (Applicant).
11. I have considered *In re Estate of Stone Kathuli Muinde (Deceased)* [2016] eKLR where the court in considering a claim by a purchaser stated as follows:
- “Such claims to ownership of alleged estate property, as between the estate and a third party, should be resolved through the civil process in a civil suit properly brought before a civil court in accordance with the provisions of the *Civil Procedure Act* and the *Civil Procedure Rules*. This could mean filing suit at the magistrates’ courts, or at the Civil or Commercial Divisions of the High Court, or at the Environment and Land Court. If a decree is obtained in such suit in favour of the claimant, then such decree should be presented to the probate court in the succession cause so that that court can give effect to it.”
12. Applying the above legal test, I find that the claim by the Applicant for more than the portion already distributed to him is not protected by the law of succession.
13. Consequently, the orders which commend to me and which I hereby issue are THAT:
1. No case has been made for revocation of the grant of letters of administration issued on December 15, 2004 and the Certificate of Confirmation of Grant dated June 3, 2014.
 2. The summons for revocation dated October 1, 2021 and filed on January 24, 2022 is without merit and it is dismissed



3. Applicant shall bear the costs of the summons

DATED AT MERU THIS 23RD DAY OF JUNE 2022

WAMAE. T. W. CHERERE

JUDGE

Appearances

Court Assistant - Morris Kinoti

For Applicant - Mr. Kamanga for Njuguna Kamanga & Co. Advocates

For Respondents - Mr. Carlpeters for Carlpeters Mbaabu & Co. Advocates

