



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

**SUCCESSION CAUSE NO. 18 OF 2001**

**(CORAM: CHERERE-J)**

**IN THE MATTER OF THE ESTATE OF STEPHEN KIRIMA SILAS (DECEASED)**

**IN THE MATTER OF APPLICATION FOR REVOCATION OF THE GRANT**

**BETWEEN**

**GRACE CATHERINE NTINYARI.....1<sup>ST</sup> OBJECTOR**

**LILIAN KARIMI STEPHEN.....2<sup>ND</sup> OBJECTOR**

**ROSELINE MAKENA MUTWIRI.....3<sup>RD</sup> OBJECTOR**

**AND**

**MURITHI R.M.W. STEPHEN.....PETITIONER/RESPONDENT**

**AND IN AN RESPONSE BY**

**SHADRACK KOOME M'NCHEBERE...INTERESTED PARTY/APPLICANT**

**RULING**

1. By a ruling dated 17<sup>th</sup> October, 2019, this court revoked/annulled the Certificate of Confirmation of Grant issued to the Petitioner on 03<sup>rd</sup> July, 2002 on grounds among others that it was obtained fraudulently and that the Petitioner did not provide for his sisters (*Objectors*).
2. Subsequently, this court by an order dated 29<sup>th</sup> April, 2021 granted the Applicant an opportunity to be heard on the application dated 11<sup>th</sup> March, 2019 seeking for revocation of the grant mainly on the ground that adverse orders had been made affecting him without affording him an opportunity to be heard.
3. By his replying affidavit sworn on 18<sup>th</sup> May, 2021 and filed on 20<sup>th</sup> May, 2021, the Applicant avers that the Petitioner had sold land parcels **LR. NYAKI/GIAKI/2663 and LR. NYAKI/GIAKI/2648** which were subdivision of **LR. NYAKI/GIAKI/1759** to the 3<sup>rd</sup> Objector who had in turn sold the same to the Applicant. Annexed to his affidavit is a title deed for **LR. NYAKI/GIAKI/2663** in his name.

**Analysis and Determination**

4. I have considered the application in the light of the affidavits on record.
5. As rightly pointed hereinabove, this court by its ruling dated 17<sup>th</sup> October, 2019 revoked/annulled the Certificate of Confirmation issued to the Petitioner on 03<sup>rd</sup> July, 2002 on grounds among others that it was obtained fraudulently and that the Petitioner did not provide for his sisters (*Objectors*).
6. The grant having been annulled, any action taken on the said grant and more particularly the subdivision of deceased's land parcel **LR. NYAKI/GIAKI/1759** into **NYAKI/GIAKI/2663** and **LR. NYAKI/GIAKI/2648** and any subsequent sale are a nullity and cannot be protected under the law of succession.
7. **In re Estate of Stone Kathuli Muinde (Deceased) [2016] eKLR** , 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.”**

8. Applying the above legal test, I find that the claim by the Interested Party/Applicant has no merit and cannot be sustained.

9. I reiterate the orders issued by this court on 17<sup>th</sup> October, 2019 as follows:

- 1) The grant made to Petitioner/ Respondent stands revoked and all consequential transactions arising from the void grant stand annulled**
- 2) Title deeds for land parcels LR. NYAKI/GIAKI/2663 and LR. NYAKI/GIAKI/2648 stand revoked**
- 3) The assets previously registered in the name of the deceased to revert to his name forthwith and be distributed to his rightful heirs.**
- 4) Interested Party/Applicant shall bear the costs of this application**

**DATED AT MERU THIS 30<sup>H</sup> DAY OF SEPTEMBER 2021**

**WAMAE, T. W. CHERERE**

**JUDGE**

**Court Assistant - Morris Kinoti**

**For Petitioner - N/A for Okatch & Partners**

**For Interested Party -Mr. Kaaria for Muchomba Law Advocates**

**For Objectors - N/A for Kuria Karatu & Co. Advocates**