



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYAHURURU

SUCCESSION CAUSE NO. 16 OF 2019

IN THE ESTATE OF THE LATE WANJIKU JOSEPH KAGOEYA ALIAS WANJIKU JOSEPH KAGUYA (DECEASED)

GODFREY MACHARIA KAMAU.....1ST APPLICANT

DANIEL MWANGI KAMAU.....2ND APPLICANT

VERSUS

JOSEPH KAGOEYA KAMAU.....1ST RESPONDENT

EBRAHIM MUCUBI KAMAU.....2ND RESPONDENT

FRANCIS KAMAU KAGOIYA.....3RD RESPONDENT

JOHN KARANJA KAGOIYA.....4TH RESPONDENT

JOHN KIMANI KAGOIYA.....5TH RESPONDENT

PETER MBUGUA KAGOIYA.....6TH RESPONDENT

RACHEL NJERI KAGOIYA.....7TH RESPONDENT

RUTH NJOKI KAGOIYA.....8TH RESPONDENT

ELIJAH WANYOIKE KBIRIE.....9TH RESPONDENT

RULING

1. The Petitioner herein petitioned for grant to administrator the estate of the deceased person one Wanjiku Joseph Kagoeya. He did get the grant thus attracted an application dated 30/01/2015 for revocation of grant in which the Applicant sought the orders;

i. That the application herein be certified as urgent and service of the same be dispensed with in the 1st instance.

ii. That pending the hearing and determination of this application inter-partes a temporary injunction do issue restraining the Respondents by themselves, their agents, servants and/or employees from evicting the Applicants, demolishing their structures and/or in any other way interfering with the Applicants peaceful occupation on LR. No. Nyandarua/South Kinangop/573 and its subdivisions.

iii. That pending the hearing and determination of this suit, a temporary injunction do issue restraining the Respondents by themselves, their agents, servants and/or employees from evicting the Applicants, demolishing structures and/or in any other way interfering with the Applicant's peaceful occupation on LR. No. Nyandarua/ South Kinangop/573 and its subdivisions.

iv. That the grant of letters of administration to Joseph Kagoeya Kamau on the 15/07/2013 and confirmed on 01/08/2013 be revoked and/or annulled on the grounds that;

a. The proceedings to obtain the grant were defective in substance; and

b. The grant was obtained fraudulently by the making of false statements and by concealment from the court of facts material to the case; and

c. The grant was obtained by non-disclosure of the existence of lawful dependants and beneficiaries of the estate of the deceased.

d. The Nyahururu SPM Court lacked jurisdiction to hear and determine the cause.

e. The grant issued on the 15/07/2013 to the 1st Respondent was confirmed on the 01/08/2013 before the expiry of six (6) months as per the law required.

v. That the titles to LR. No. Nyandarua/South Kinangop/ 13561 – 13570 which are a subdivision of LR. No. Nyandarua/South Kinangop/573 be revoked and the original number be reinstated in the deceased name.

vi. That the costs of this application be borne by the Respondents.

2. The Application is supported by affidavit of Geoffrey Macharia Kamau and Daniel Mwangi Kamau sworn on 30/01/2015.

3. The same is opposed by affidavit of Joseph Kagoeya Kamau sworn on 29/05/2015. The parties via advocates were directed to canvass the application via written submissions after the hearing of the same matter.

SUBMISSIONS:

4. The Applicant filed and served same but the Respondent has not filed their submissions.

APPLICANT SUBMISSIONS:

5. The petition was filed by 1st Respondent Joseph Kagoeya Kamau on the 03/05/2013. He described himself as the husband of the deceased Wanjiku Joseph Kagoeya.

6. In the Petition, 3 children being John Karanja Kagoeya, Godfrey Kamau Kagoeya and Resho Njeri Kagoeya were listed as beneficiaries of the deceased alongside the 1st Respondent.

7. The estate was comprised of LR. No. Nyandarua/South Kinangop/ 57.

8. A grant was issued to the 1st Respondent on the 1/07/2013 and the same was confirmed on the 01/08/2013 less than one month. Copies of the petition and the grants were marked as annexures GMK2 to the Summons for Revocation of grant.

9. The 1st Respondent proceeded to subdivide LR. No. Nyandarua/South Kinangop/573 into 10 portions being Parcels No. 13561 – 13570 and the subdivisions were transferred to the 2nd – 9th Respondents who are the 1st Respondent's children.

10. The Applicants became aware of the succession cause and the fact that the land had been subdivided after they were threatened with eviction by the Respondents. They sought for revocation of grant and cancellation of the titles.

11. The Applicant's case is that Wanjiku Joseph Kagoeya was the mother of the 1st Respondent herein and not his wife as stated in the petition filed in Nyahururu Senior Principal Magistrate Succession Cause No. 67/2013.

12. The Applicants are the 1st Respondent's brothers and sons of Wanjiku Kagoeya.

13. Evidence was led by the Applicants to prove that Wanjiku Joseph Kagoeya died on the 21/11/1994 and she had eight children including the 1st Respondent.

14. The Applicants and the families of their deceased brothers are settled on the suit property with their wives and children.

15. The 1st Respondent contention that the deceased was his 1st wife is false and in cross examination, he contradicted himself so much that it became clear beyond peradventure that he lied that the deceased was his wife so as to disinherit his brothers.

16. The applicants rely entirely on the evidence on record which they are unable to reproduce in their submissions due to constraint of time.

So have the Applicants demonstrated sufficient grounds for the court to revoke the Grant?

17. It is submitted that, the 1st Respondent made a false statement to the effect that the deceased was his wife.

18. He replied on a forged death certificate while petitioning for a grant which showed that the deceased died on 19/06/1978 aged 36 years

old whereas her actual date of death was 21/11/1994.

19. The said death certificate related to a completely different person but the 1st Respondent inserted the deceased's names in a copy which he used to petition for a grant.

20. He did not avail the original in court for comparison and to confirm that the copy was genuine. (*See PW2's evidence*).

21. The Chief's letter that he used to petition for a grant was from a Chief of a different location from where the deceased resided.

22. The Applicants and the other children of the deceased who were persons entitled to the estate and ranking in equality to the 1st Respondent were left out in the petition and they did not consent to the entire process which led to the issuance and confirmation of the grant.

23. The estate which comprises of land measuring approximately 12 acres was undervalued at Kshs.100,000/- in the petition.

24. The 1st Respondent had initially attempted to transfer the land as per the family agreement entered before the Chief on the 13/08/2015 as confirmed by the District Settlement Officer but is turned out that the grants he supplied to Settlement Fund Trustee are not in any way related to the case cited which *Nakuru High Court Succession Cause No. 200 of 2003 (Evidence of DW3)*.

25. In a strange twist of events, the grant issued to him on 15/07/2013 was confirmed on 01/08/2013 after 15 days.

26. This was in clear breach of **Section 71 of the Law of Succession Act**.

27. The certificate of confirmation grant was therefore null and void abinitio.

28. Applicants therefore submit that the Applicants have proved the grounds set out in **Section 76 of the Law of Succession Act** to warrant the revocation of the grants issued in *Nyahururu SPM Succession Cause No. 67/2013*.

29. Thus they pray for the grants to be revoked and for the title deeds which were issued as a result of the flaws to be cancelled and for the original parcel No. 573 to be reinstated to revert back to the deceased. A death certificate is yet to be regularly issued.

30. On the issue of distribution of the estate, applicants propose that parties be ordered to commence the entire process afresh given the grave illegalities and forgeries that were involved in the initial petition.

31. The deceased herein had other children who are deceased including the 1st Respondent who died recently and there is need of taking an inventory of the surviving beneficiaries and thus propose parties do petition afresh.

32. Applicants rely on the case of *in the Estate of Wahome Mwenje Ngonoro (Deceased) [2016] eKLR* in support of their submissions.

33. In replying affidavits, the Respondents reiterates that the deceased Wanjiku Joseph Kagoeya was his wife and persons named by Applicants in the application as beneficiaries are not children of the deceased. Instead he says the following are deceased's children;

- *Joseph Karanja Kagoeya*
- *Godfrey Kamau Kagoeya*
- *Resho Njeri Kagoeya*

34. He says he got a Chief's letter validly as deceased hailed from the author of letter locality.

ISSUES, ANALYSIS AND DETERMINATION

Whether the grant of letters of administration issued on the 15/07/2013 to the 1st respondent which was confirmed on the 01/08/2013 should be revoked?

35. According to **section 76 of the Law of Succession Act**;

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 order or allow; 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

iv. that the grant has become useless and inoperative through subsequent circumstances.

36. In the Matter of the Estate of L A K – (Deceased) [2014] eKLR the court held that;

“Revocation of grants is governed by Section 76 of the Law of Succession Act. The relevant portions of Section 76 are paragraphs (a), (b) and (c) since the issues raised relate to the process of the making of a grant. A grant may be revoked where the proceedings leading up to its making were defective, or were attended by fraud and concealment of important matter, or was obtained by an untrue allegation of a fact essential to the point.

In order for the orders sought to be granted, the objectors must prove that the grounds for revocation have been satisfied.”

37. After going through the pleadings, documents on record and parties evidence, I find that, the 1st Respondent made a false statement to the effect that the deceased was his wife. The deceased was the mother of the applicant and the two applicants among others.

38. The 1st Respondent relied on a forged death certificate while petitioning for a grant which showed that the deceased died on 19/06/1978 aged 36 years old whereas her actual date of death was 21/11/1994. This allegation was not rebutted by the 1st Respondent.

39. The applicants alleged that the said death certificate related to a completely different person but the 1st Respondent inserted the deceased’s names in a copy which he used to petition for a grant. This allegation was also not rebutted by the 1st Respondent.

40. He did not avail the original in court for comparison and to confirm that the copy was genuine. (See PW2’s evidence).

41. The Chief’s letter that he used to petition for a grant was from a Chief of a different location from where the deceased resided.

42. The Applicants and the other children of the deceased who were persons entitled to the estate and ranking in equality to the 1st Respondent were left out in the petition and they did not consent to the entire process which led to the issuance and confirmation of the grant.

43. The estate which comprises of land measuring approximately 12 acres was purportedly valued at Kshs.100,000 which court takes judicial notice to be an undervalue at Kshs.100,000/- in the petition.

44. There is also evidence that, the 1st Respondent had initially attempted to transfer the land as per the family agreement entered before the Chief on the 13/08/2015 as confirmed by the District Settlement Officer but it turned out that the grants he supplied to Settlement Fund Trustee are not in any way related to the case cited which Nakuru High Court Succession Cause No. 200 of 2003 (Evidence of DW3).

45. Further, the grant issued to him on 15/07/2013 was confirmed on 01/08/2013 after 15 days. Both applicants raised issue as to how the administrator did apply and obtain confirmation of grant within the period not allowed in law. Confirmation of grants is provided for in section 71 of the Law of Succession Act, the relevant portion says as follows:

“Confirmation of Grants

Section 71. Confirmation of grants

After the expiration of a period of six months, or such shorter period as the court may direct under subsection (3), from the date of any grant of representation, the holder thereof shall apply to the court for confirmation of the grant in order to empower the distribution of any capital assets.”

23. Under section 71, an administrator is enjoined to apply for confirmation of his grant after expiration of six months from the date the grant was made to him. The provision is in mandatory terms.”

46. This was in clear breach of Section 71 of the Law of Succession Act as subsection 3 of the same provisions were not invoked for confirmation of grant within shorter period than 6 months.

47. Thus the court finds that the application herein has merit and makes the following orders.

(i) That the grant of letters of administration to Joseph Kagoeya Kamau on the 15/07/2013 and confirmed on 01/08/2013 be and are hereby revoked and/or annulled.

(ii) That the titles to LR. No. Nyandarua/South Kinangop/ 13561 – 13570 which are a subdivision of LR. No. Nyandarua/South Kinangop/573 be and are hereby cancelled and /or revoked and the original number be reinstated in the deceased name.

(iii) Parties to file fresh petitions and /or cross-petition and all relevant documents within 30 days and exchange for fresh hearing of the matter on priority basis.

(iv) That the costs of this application be borne by the Respondents.

DATED, SIGNED AND DELIVERED AT NYAHURURU THIS 23RD DAY OF SEPTEMBER, 2021.

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CHARLES KARIUKI

JUDGE