



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYAHURURU

SUCCESSION CAUSE NO. 8 OF 2018

IN THE MATTER OF LEAH WANGUI NDIING'URI (DECEASED)

ELIZABETH NDUTA MUNORU.....ADMINISTRATOR/1ST RESPONDENT

HANNAH NYOKABI NGONYO.....ADMINISTRATOR/2ND RESPONDENT

VERSUS

JANE WACUKA NDUNG'U.....1ST APPLICANT

WAKABA NDERI MUCHIRI.....2ND APPLICANT

AND

JOSEPH MWANGI KARAGO & 5 OTHERS.....INTERESTED PARTIES

JUDGMENT

1. The Applicants and Interested Parties filed an application dated 20th August 2021 under **Section 3, 47 of the Law of Succession Act CAP 160 Laws of Kenya, Rules 41,49 and 73 of the Probate and Administration Rules** seeking the following orders:

i. Spent

ii. Spent

iii. That pending the hearing and determination of the chamber summons application dated 9th February 2011, the Administrators herein, be and hereby restrained whether by themselves, their agents, their servants, employees, or anybody else whatsoever from evicting, harassing or in any other way interfering with the peaceful enjoyment of the Applicants in their parcels of land emanating from subdivision of L.R Nyandarua/South Kinangop/781.

iv. That the ex parte proceedings conducted by the Administrators for confirmation of grant be and are hereby set aside.

v. The certificate of confirmation of grant dated 11th February 2021 be and is hereby cancelled and/or revoked.

vi. That this honorable court does issue any other order/directions to prevent the abuse of the process of the court.

vii. That costs of this application be borne by the Administrators.

APPLICANTS' AND INTERESTED PARTIES SUBMISSIONS

2. The Applicants submitted that the Administrators instead of pursuing the application dated 9th February 2011, secretly filed an application dated 3rd August 2020 seeking confirmation of a grant that was issued on 28th April 2008. That the Administrators misled the court and did not disclose that there was a pending application dated 9th February 2011 which was yet to be heard and determined. Additionally, it was their argument that the Administrators ought to have served them as required under **Rule 41 (1) of the Probate and Administration Rules**.

3. Further, counsel submitted that the Administrators misled the honorable court to issue a certificate of confirmation of grant of a property known as L.R No. Nyandarua/South Kinangop/781 which property was subdivided and does not exist either on the ground or in the land registry. Therefore, the issuance of the letter dated 13th August 2021 is not only malicious, it is misleading and intended to cause confusion and panic to all the bona fide purchasers for value and is likely to cause breach of peace on the ground.

4. In conclusion, it was averred that the Respondents' titles are still intact, sacrosanct and protected by law and until and unless they are cancelled by an order of court, the Administrators have no legal right to interfere with the peaceful occupation and enjoyment of the parcels held by the Respondents and interested parties and prayed that the application be allowed.

RESPONDENTS/ ADMINISTRATORS SUBMISSIONS

5. According to the Administrators the issues for determination herein are:

a. Whether the issues in the application dated 9th February 2011 were dealt in the Ruling delivered on 19th May 2020.

b. Whether the Administrators were obligated to include the Applicants and interested parties in the petition for confirmation of grant.

6. On the first issue, it was submitted that the honorable court was able to look into the particulars of this case and the fraud that was involved in the previous letters issued and confirmed in favour of the Applicants herein and held that it did have jurisdiction to hear and determine those issues as the Applicants themselves had brought the issues before the court.

7. The Administrators averred that the court came to a conclusion that the Applicants had subjected themselves to the jurisdiction of the court by fraudulently petitioning for letters of administration, they were therefore bound by its decision on the orders sought.

8. It was their assertion that the court held that it did have powers to cancel titles if it finds that the person had no interest in the land which was what happened in this case as the Applicants were not heirs of the deceased, that due to the fraud, the Applicants could not obtain genuine titles and hence could not take refuge under **Section 93 of the Law of Succession Act**.

9. Further, the Administrators argued that the grant issued to the Applicants was revoked and that meant that all actions taken by them including registration of the deceased property in their names was rendered a nullity. That the court also ordered that it was only after the Administrators have finished administering the estate that the Respondents can file suit in the Environment and Land Court to pursue their rights if any and specifically on the claim that they were bona fide purchasers for value of the various plots emanating from the parcel Nyandarua/South Kinangop/781.

10. The Respondents contended that the Applicants had since 19th August 2020 to challenge any part of the ruling and have not done so.

11. On the second issue, the Administrators averred that the Applicants are not beneficiaries of the estate and should not participate as they have no legal mandate hence they cannot seek the orders that the certificate of grant be set aside.

12. In conclusion, the Administrators prayed that the application be dismissed with costs.

ANALYSIS AND DETERMINATION

13. I have carefully considered the application, the affidavits tendered by both parties in support and in rebuttal of issues, herein, the ruling of the court dated 19th May 2020 as well as the judicial precedence and the law of the subject of this application and make the following observations: -

14. The Applicants herein obtained a grant fraudulently by declaring themselves as the sons of the deceased when they were not. The grant issued to the Applicant was revoked as therefore all actions taken by the Respondents including the registration of the deceased's property in their names was rendered a nullity including the registration of parcel Nyandarua/South Kinangop/781 in their names and all consequent actions relating to that parcel of land. The Applicants were also found to have intermeddled with the deceased's estate as per **Section 45 of the Law of Succession Act**.

15. I agree with the Administrators herein that the issues raised in the application dated 9th February 2011 were effectively dealt with in the ruling dated 19th May 2020 and find that the certificate of confirmation of grant dated 11th February 2021 cannot be cancelled and/or revoked on the basis of that the Administrators did not reveal the same as the application was already spent.

16. In view of the foregoing, it also my view that the Administrators had no duty to notify the Respondents about the confirmation of grant proceedings as they were not beneficiaries of the estate and/o beneficially entitled to the estate of the deceased. The Applicants claim to a stake in the estate is unfounded and as the court state in its ruling dated 19th May 2020 it was only after the Administrators have finished administering the estate that the Respondents can file suit in the Environment and Land Court to pursue their rights if any and specifically on the claim that they were bona fide purchasers for value of the various plots emanating from the parcel Nyandarua/South Kinangop/781.

17. In the premises, the court makes the orders;

(i) The application dated 20th August 2021 is misconceived and I do hereby dismiss the same with orders that parties bear their

own costs.

DATED, SIGNED AND DELIVERED AT NYAHURURU THIS 16TH DAY OF DECEMBER, 2021.

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CHARLES KARIUKI

JUDGE