



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KIAMBU

SUCCESSION CASE NO. 5 OF 2017

IN THE MATTER OF THE ESTATE OF GATHUKU GATHUNA (DECEASED)

PHELIS WAIRIMU MWAURA.....APPLICANT

VERSUS

LEONARD NGUGI GATHUKU.....1ST RESPONDENT

ISAAC KAMAU GATHUKU.....2ND RESPONDENT

KIAMBU DISTRICT LAND REGISTRAR.....3RD RESPONDENT

R U L I N G

1. Before me is the Summons for Revocation of Grant filed on 30th April, 2018 and expressed to be brought under Section 76 of the Law of Succession Act and Rules 44 and 73 of the Probate and Administration Rules. The two key prayers in the application seek the revocation/nullification of the Grant of Letters of Administration Intestate issued to **LEONARD NGUGI GATHUKU** on 27th Day of July, 2017 and an order directing Kiambu District Land Registrar to furnish to the court the records and/or the green card in respect of land parcel **LR No. KIAMBAA/THIMBIGUA/1088**.

2. The application is based on grounds that the Grant of Letters of Administration Intestate was obtained by the Respondents through fraud which entailed forgery the Applicant's signature. The application is further supported by the affidavit of **PHELIS WAIRIMU MWAURA**, the Applicant herein. She deposed that she is the deceased's daughter and a beneficiary of the estate herein; that as she was preparing to Petition for Letters of Administration due to the default by the Respondents, she learnt that the Respondents had already petitioned without involving her, the time for making objection had lapsed. She contended that she did not sign the consent filed in the cause herein and that the deceased's estate has since been fraudulently transferred before the Grant could be confirmed.

3. **LEONARD NGUGI GATHUKU** filed his replying affidavit on 24th July, 2018. He claimed that the Applicant is a stranger to the deceased's estate as the deceased already distributed his estate before his demise, and that the Applicant was offered a property but declined because she was married. He also asserted that the Chief Karuri Location had made a ruling that the Applicant was not entitled to the deceased's estate and the same has not been appealed. He viewed the application as an afterthought and that the same should not be entertained.

4. When the Summons for Revocation of Grant came up for hearing, the court directed that the application proceeds by way of cross-examination of deponents to respective affidavits.

5. The Applicant (**PW1**) adopted her supporting affidavit. In cross-examination by Mr. Amadi, she contended that the deceased's family did not have any meeting before the deceased's death to deliberate on the distribution of the estate. She stated that her sister Virginia Wachuka was given a plot of land at Karuri by the deceased. She denied that she renounced her right to inherit deceased's land. She asserted that she learnt about the Petition after it had been filed without her consent.

6. The 1st Respondent (**RW1**) adopted his replying affidavit. When cross-examined by Mr. Njuguna, he asserted that he was also representing his brother **Isaac Kamau**. He stated that the Applicant was not excluded from the proceedings as shown by the Chief's letter. He stated that he did not witness the Applicant signing the consent and that the Applicant was not involved in the filing of the cause as she is not entitled to the estate herein. He stated that he had already commenced construction on his inherited parcel because each of the beneficiaries knew their portion stating that distribution was in accordance with the deceased's wishes. He denied being aware of the existence of a confirmed grant but asserted that there was urgency to confirm the grant to facilitate financing arrangements for his planned developments.

7. Subsequently, parties were directed to file their written submissions. The court has considered the material canvassed in respect of the

summons to revoke grant filed on 30th April 2018. The application is grounded on alleged fraud on the part of the grant holders. There is no dispute that the Applicant **Phelis Wairimu Mwaura** is a sister to **Leonard Ngugi Gathuku** and **Isaac Kamau Gathuku**, the latter duo being the joint grant holders in this case. They are some of the surviving children of the deceased herein. Others are **Virginia Wachuka**, **Caroline Karendi Gathuku** (deceased), **Godfrey Gathuna Gathuku** (deceased) and **Cyrus Ngaari Gathuku** (deceased).

8. The Applicant's case is that the Petitioners filed the petition for grant of letters intestate secretly, and purported through a forged signature on the consent form, that the Applicant had granted consent to the petition. That subsequent to the issuance of the grant, the grant holders proceeded to file an application to confirm grant, also supported by a forged consent to confirmation of grant also purporting that the Applicant had consented thereto.

9. The Respondents' answer through the affidavit of **Leonard Ngugi Gathuku** to these serious accusations is evasive. Without addressing the allegations of forgery in respect of the Applicant's signature, the said deponent confined himself to the question whether the Applicant was entitled as a beneficiary to the estate of the deceased, while at the same time admitting that she was a daughter of the deceased. He took umbrage to the fact that the Applicant purports by her application to "appeal" a decision of the local chief allegedly declaring the Applicant not entitled to a share of the estate. Reading through the affidavit in reply to the motion and submissions of the Respondents, it is difficult to believe that these documents were prepared by a competent advocate.

10. The Applicant has annexed correspondence between her advocates [**annexure PWMI dated 12th April 2017**] and the Applicant's advocates [**annexure PWM2 dated 8th April 2017**] which supports her contention that the Petitioners did not seek her consent or notify her about the institution of these proceedings. Though this petition had already been filed by April 2017, the Respondents concealed that fact in answering the Applicant's letter which had asserted *inter alia* the Respondent's failure to petition for grant, and served notice that the Applicant would proceed to cite the Respondent unless they handed over to her the deceased's death certificate to enable the Applicant herself petition for a grant.

11. What followed was that the Respondents filed a summons to confirm the grant already issued to them. The summons, filed on 30/8/2017 under certificate of urgency was placed before the Duty Judge on the 31/8/17. The Court directed that the summons be heard in the High Court in Kiambu (the cause having earlier been transferred on 29.12.16 to this court). The application has never been heard.

12. Notwithstanding the foregoing, it appears that a certificate of confirmation of grant purportedly issued by this court on 24th January 2018 under the hand of **Ngugi J** was presented to the **Kenya Commercial Bank Limited** early in 2018. Through the firm of **Gathara and Co. Advocates**, *vide* letter dated 27th April 2018, the **Kenya Commercial Bank Limited** sought to authenticate the grant and purported certificate of confirmed grant. The inquiry was received by this Court's registry on 2nd May 2018. The Deputy Registrar of this court by his letter of 17th May 2018 confirmed that the copy of grant was authentic, however stating quite correctly, that the purported certificate of confirmation of grant was not issued by this court. The purported certificate of confirmation of grant is therefore an outright case of forgery that requires full investigation by the relevant authorities.

13. By the purported certificate of confirmation of grant the deceased's sole asset, namely, **LR No. KIAMBAA /THIMBIGUA/ 1088** was distributed as follows;

1. Caroline Karendi Gathuku

Virginia Wachuka Gathuku 0.042 Ha. Jointly

Phyllis (Phelis) Wairimu Mwaura

2. Leonard Ngugi Gathuku - 0.219 Ha.

3. Isaac Kamau Gathuku - 0.134 Ha.

14. This certificate represents the third act of forgery in this case. Under Section 76 of the Law of Succession Act, the Court is empowered to revoke or nullify any grant procured through fraud such as the one issued in this case. A grant obtained through forged documents cannot be allowed to stand. The purported certificate of confirmation of grant is also the product of forgery as it did not issue from this court as purported, and the court has no doubt that, as with the forged signature of the Applicant in consent documents, the grant holders herein must have played a role in its making.

15. This court will proceed to nullify the grant issued to the two grant holders herein for fraud, and order that a new grant be issued in the names of the Applicant, **Phelis Wairimu Mwaura** and her sister **Virginia Wachuka Gathuku**. By the same token, the court directs the Deputy Registrar of this court to make a formal report to the Directorate of Criminal Investigations so that investigations can be carried out to unearth the circumstances in which the purported certificate of confirmed grant dated 24th January 2018 came into existence and was thereafter uttered to the Kenya Commercial Bank, and to have the culprits responsible held to account in accordance with the law.

16. The court further directs that the newly appointed administrators to file a summons to confirm the grant issued to them within 3 months of today's date, indicating the identities of the children of the intestate and if deceased, the identities of their children surviving them and propose the mode of distribution.

17. In light of the discoveries made in this matter, this directs court the Land Registrar, Kiambu within 21 days of today's date to furnish to this court and to the newly appointed administrators a copy of the green card in respect of the land parcel **No. LR KIAMBAA/THIMBIGUA/1088** showing current ownership and a complete record of all transactions in respect of the said land parcel since

September 2016. For this purpose, this matter will be listed on the 25th March 2020 to confirm compliance by the Land Registrar and to make other necessary orders. The Deputy Registrar to facilitate the expeditious extraction and service of orders herein upon the Land Registrar, and the filing of a formal complaint in respect of the forged certificate of confirmation of grant to the Directorate of Criminal Investigations.

18. Parties will bear own costs.

DELIVERED AND SIGNED AT KIAMBU THIS 20TH DAY OF FEBRUARY 2020

.....

C. MEOLI

JUDGE

In the presence of:

Mr. Kinyanjui holding brief for Mr. Amadi for Virginia Wachuka

Ms Gathua holding brief for Mr. Njuguna for the objectors

Court Assistant – Ndege/Nancy