



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KIAMBU

SUCCESSION CASE NO 9 OF 2017

FORMERLY NAIROBI SUCCESSION CAUSE NO 1058 OF 2010

IN THE MATTER OF THE ESTATE OF CHEGE KAI (DECEASED)

GODFREY KAMAU NDAUWA.....APPLICANT

VERSUS

TIMOTHY NG'ANG'A CHEGE.....1ST RESPONDENT

TERESIAH WAMBUI GACHAU.....2ND RESPONDENT

RULING AND DIRECTIONS

1. Before me is Summons for Revocation or Annulment of Grant filed on 27th May, 2010 and brought under Section 76 of the Law of Succession Act and Rule 44 of the Probate and Administration Rules. The Applicant seeks the revocation/annulment of the grant and certificate of confirmation thereof made to TIMOTHY NG'ANG'A CHEGE on 19th December, 2009 in Thika Chief Magistrate's Court Succession Cause No. 123 of 200.

2. The application is based on the grounds that the proceedings to obtain the grant were defective in substance and that the same was obtained fraudulently by making false statements and by concealment of material facts. The application is supported by the affidavit of Godfrey Kamau Ndauwa, the Applicant herein. He deposed that the deceased's estate comprised of 2.20 acres out of land parcel Reference Number NDARUGU/KARATU/1103 while the Applicant owned the remainder of the parcel pursuant to a sale agreement 1994 by which the deceased sold to him 1.1 acres out of his share of 2.20 acres. He further deposed that the deceased made a will in 1998 to that effect and that he has been living on the land peacefully.

3. **TIMOTHY NG'ANG'A CHEGE** filed his replying affidavit on 25th August, 2010. He deposed that he is the deceased's first born son and that he is not aware of the Applicant's claims that he bought land from the deceased. He averred that the deceased allowed the Applicant to occupy a portion of the land out of sympathy and that the alleged will is a fabrication. He urged the court to issue an eviction order against the Applicant in order for distribution of the estate to take effect.

4. The court directed that the Summons for Revocation of Grant be argued orally. Ms. Wambui argued on behalf of the Applicant. She submitted that the lower court distributed property that was not part of the estate of the deceased, hence the grant should be revoked. She asserted that the title deed reflects the Applicant's share of the property.

5. Timothy Ng'ang'a wished to rely on his replying affidavit. He denied that the suit property is jointly owned. He disputed the Applicant's claim and took issue with the joint ownership asserted by the Applicant.

6. The grant sought to be revoked through the summons filed on 27th May 2010 was issued in Thika CM's Succession Cause No. 123 of 2001. Despite several requests by this court that the lower court forwards the original record to this court, this has never happened. The matters canvassed in the application by the Applicant seem to suggest that the deceased died testate. Without the benefit of the lower court record, it is difficult to determine whether the succession cause in the lower court was an intestate or a probate cause or the nature of material supporting the petition and the application to confirm the grant issued therein. Despite the delay in concluding this matter, it is essential that the issues raised by the summons for revocation be resolved once and for all.

7. In the circumstances, the court directs that this matter be transferred to the Chief Magistrate's court Thika and be consolidated with Succession Cause No. 123 of 2001 so that the summons for revocation can be heard *de novo* via adduction of evidence by the respective parties. In view of the age of the dispute, the court directs that priority hearing dates be taken before the Chief Magistrate at Thika on 19th March 2020 when this cause is to be listed before him.

DELIVERED AND SIGNED AT KIAMBU THIS 5TH DAY OF MARCH 2020

C. MEOLI

JUDGE

In the presence of:

Mr. Mbiyu holding brief for Ms Wambui for Applicant

Respondent Timothy Ng'ang'a – Present

Court Assistant