



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERUGOYA

MISC. SUCCESSION CAUSE NO. 1 OF 2017

IN THE MATTER OF THE ESTATE OF MIANO MBUIMWE (DECEASED)

JOHN WACHIRA MIANO & ANOTHER.....APPLICANT

VERSUS

BELINANDA WANJIRU MIANO & 3 OTHERS.....RESPONDENTS

JUDGMENT

1. The application pending before this court is the one dated 25th January, 2017 which is a summons for revocation or annulment of grant under **Section 76 of Law of Succession Act Cap 160 and Rule 44 (1) of the Probate and Administration Rules.**

2. It seeks the following order;

1. That the letters of administration made to the 1st and 2nd respondent on 17th May, 2016 and confirmed on 27th September, 2016 be revoked or annulled on the **following grounds.**

a) That the proceedings to obtain the grant were defective in substance as the Petition (Form P & A. 80) was filed by the 4th Respondent who was not in any way related to the deceased but purported to do so as a Purchaser of the deceased's land when he was not, in fact and in law a lawful purchaser as he claimed.

b) The grant was obtained and later confirmed fraudulently by concealment from court of something material to the case namely that the deceased was survived by several adult children whose names were omitted from (P & A 5) and were never disclosed to Court any time thereafter resulting in the disinheritance of the said children in contravention of their right to inherit their father's estate under the law. All the Respondents are to blame for this concealment of a material fact.

c) The grant was obtained by means of an untrue allegation of fact by the 4th Respondent namely that he would faithfully administer the estate according to law but did the exact opposite by unlawfully awarding himself a portion of the deceased's land which was in fact even bigger than the portion he claimed to have purchased and disinheriting many of the deceased's children who were some of the rightful beneficiaries

d) The confirmed grant was fraudulently obtained by the 4th Respondent by the presentation to Court of a purported written consent to confirmation of grant which was either forged or whose contents were never explained to the deceased's elderly and illiterate widows.

e) The confirmed grant was fraudulently obtained by means of untrue allegations of a facts essential in point of law to just if the confirmation namely that all entitled beneficiaries had consented on the mode of distribution vide the written consent which was a forgery and concealment from the Court of the names of the deceased's children and the 4th Respondent falsely claiming to be a dependent of the deceased in paragraphs 2 and 3 of the affidavit in support of summons for confirmation of grant of administration intestate.

f) The proceedings to obtain the confirmation of grant were defective in substance in that the summons for confirmation of grant were drawn and filed by an unauthorized person namely the 4th Respondent who was a stranger as far as the deceased's estate was concerned.

3. The application is supported by the affidavit of the applicant John Wachira Miano who has reiterated the above grounds and further disposes that the deceased Miano Mbuimwe as to this proceedings herein relate was his father and the co-applicant is his Step-sister.

4. This matter relates to the Estate of Miano Mbuimwe who died in the year 2002 and was survived by his two wives Belinda Mumbi Miano aged 90 years and illiterate and Hellen Wangechi Miano aged over 80 years and is also illiterate.

Belinda Mumbi had two children namely;

- Nancy Wangui Njoka (2nd applicant) aged 60 years and has six (6) adult children some of whom leave on the deceased land.
- The late Joseph Mwai Miano who died in 2003 leaving behind a widow and eight children.

5. The second wife Hellen Wangechi Miano has seven children namely:

- Mary Kanini Miano
- Joseph Wachira Maino (1st applicant
- Julius Munene Miano
- Wangui Miano
- Njeri Miano
- Muthoni Miano
- Joseph Mwangi Miano

6. He contends that the fourth respondent David Muriuki Karioko who filed the Petition is not in any way related to the deceased but he purported to do so as a purchaser of the deceased land when he was not in fact or law a lawful purchaser as the deceased had no dealings with him relating to his land during his lifetime.

7. The fourth respondent in his affidavit in support for the summons of confirmation of grant falsely and fraudulently alleged that he was dependant/creditor of the deceased when he well knew that he was neither a dependant neither a creditor.

8. Further that the fourth respondent deliberately failed to disclose and/or concealed the fact that the deceased had numerous children as required in Form P & A 5. The core respondents are illiterate and there is no evidence to show that the fourth respondent consulted them while filing the documents.

9. The applicant contends that the fourth respondent obtained the confirmation of grant fraudulently by his misrepresentation to court over purported written consent by him and his co-respondents which was either forged or whose contents were never explained to the deceased elderly and illiterate widows. It is therefore tainted fraud and was therefore invalid.

10. That the confirmed grant was fraudulently obtained by means of untrue allegation of facts essential to a point of law to justify the grant and confirmation namely that all the beneficiaries entitled to the estate of the deceased had not consented to the mode of distribution vide the purported written consent which was a forgery and concealment from court of the deceased children and false claim by fourth respondent that he was dependant of the deceased. In paragraph 2 & 3 of the Affidavit in support of the confirmation of grant.

11. The proceedings were also defective in substance in that the summons for confirmation of grant were drawn and filed by unauthorized person who was a stranger as far as the deceased estate was concerned without leave of the court.

12. The fourth respondent filed a replying affidavit and deposes that on 30th August, 2001 he entered into a land sale agreement with Joseph Mwai Miano who was a son of Miano Mbuimwe who was to sell to him ½ an acre out of land parcel number **Mutira/ Kanyei/19** which was his share of inheritance.

13. The mother of Joseph Mwai Miano who is Belinda Mumbi Miano aka Mumbi Miano was a joint vendor. That when the vendor and his mother the 1st respondent delayed filing Succession Cause as promised he cited them in Kerugoya **Succession 163 of 2012**.

Mumbi Miano entered appearance but she never pursued the succession and was forced to foot the whole suit.

14. The Succession was gazetted 19th September, 2014 and on 8th of June, 2015 the letters of administration were issued in his favor and the Grant was confirmed on 24th September, 2015. On 17th May, 2016 the grant was revoked by the Court and later on 31st of August the 1st respondent applied a confirmation of grant as the 2nd respondent had been un-co-operative all through. The grant was confirmed on 27th September, 2016.

15. That the applicants are lying that he was not a purchaser and yet the 2nd applicant is a signatory to an acknowledgment of receipt with her mother the 1st respondent, and the 1st respondent had agreed to foot the cost of the Succession but she had no cash and they agreed with the 2nd applicant that he foot the bill and they compensate him with ¼ of an acre within the estate and was supposed to get ¾ an acre inclusive of an half acre which he had purchased from Joseph Mwai Miano. He deposes that the Succession was done above board.

16. The 3rd respondent has sworn an affidavit on 10th October, 2017, stating that he does not oppose the application for revocation of grant. The 2nd respondent Hellena Wangechi Miano having sworn an affidavit on 10th October, 2017 and he deposes that the contents in paragraph 19, 20, 23 of the fourth respondent replying affidavit are false.

17. He deposes that the fourth respondent took advantage of their illiteracy and advanced age and forced them to sign documents at the pretext that to have their late husband land registered in their name but ended up taking a large portion of the deceased land to which he was not entitled. He therefore supports the application for revocation/ annulment of grant. The parties adduced evidence and also filed written submissions, which I have considered.

18. For the Applicants' Submissions were filed by I.W. Muchiri & Company advocates, and his submissions he has stated that the fourth respondent embarked on a scheme whose hallmark was fraud through the making of a false statement and concealment from the court of material facts. The making of untrue allegations of facts essential in points of law and manipulation in process of the law to actualize the grant which is sought to be revoked.

19. The grant unlawfully declared him the heir of a substantial portion of the deceased estate, it is also our contention that in doing so he apparently enlisted in some instances the support of the deceased elderly and illiterate widows through intimidation, coercion, black mail and deceitful inducement or persuasions. He submits that the proceedings to obtain the grant were defective in substance as the fourth respondent who filed form P& A 80 in the lower court was not related to the deceased and had no right to Petition for the grant in respect for the deceased estate. In priority over the deceased widows, children and grandchildren within the mandatory provisions of **Section 66 of The Law of Succession Act.**

20. That the fourth respondent claimed to be a purchaser but admitted in court that he had no vendor/purchaser relationship with the deceased in respect of his said parcel of land and that the only agreement he had for sale of land was between him and the deceased late's son Joseph Mwai Miano and his alleged Mumbi Miano and that the said agreement was entered into without the deceased's knowledge and this lies and concealment no doubt gave the fourth respondent a foothold in the proceedings relating to the deceased estate which ended up in the grant in which he was declared a beneficiary of the deceased estate.

21. This fraudulent statement rendered the entire proceedings and the final grant defective as they misled the lower court thereby preventing it from distributing the estate of the deceased in accordance to **Law of Succession Act.**

22. He further submits that the action of the fourth respondent amounts to grossly intermeddling with the deceased estate alleging he was a purchaser from persons who had no right to sell the estate when the deceased was still alive. He has annexed the case of: **GITAU & 2 Others -Versus- Wandai & 2 Others (1989) KLR 241** where it was held that

“ even signing an agreement for sale in respect of a deceased's persons land by unauthorized persons amounts to intermeddling in the meaning of Section 45 (1) of The Laws of Succession Act Cap 160.”

He held on to the temporary grant of the deceased estate until 17th May, 2016 when Hon. Justice Limo discovered the irregularities and revoked the grant and issued a fresh grant to the two widows of the deceased.

23. The grant obtained by the fourth respondent concealed material facts from the court namely that the deceased was survived by several adult children whose names were omitted from FORM P & A 5 and were never disclosed to court anytime thereafter resulting in disinheriting of the said children in contravention of their right to inherit their father's estate under the law and in particular **Section 35 and 40 of The Law of Succession Act.**

24. It is further submitted that the fourth respondent did not honor his undertaking on oath contained in form P & A 80 when he petitioned for temporary letters of administration that he would faithfully administer the estate according to the law but did the exact opposite, by unlawfully awarding himself a portion of the deceased land which was in fact even bigger than the portion he claimed to have purchased, thereby disinheriting the deceased children who were some of the rightful beneficiaries and other lawful dependants of the deceased.

25. The fourth respondent was not entitled to any portion of the deceased estate.

26. He submits that the grant was fraudulently obtained by means of untrue allegations of facts essential in point of law to justify to confirmation of grant namely that all entitled beneficiaries had consented on the mode of distribution vide the written consent which was suspicious and concealment from court of the names of the deceased children and fourth respondent falsely claiming to be a dependant of the deceased in paragraph 2, 3 and 4 of the respondents affidavit in summons for confirmation of grant.

27. He urges the court to find that the application has merit and the fourth respondent be condemned to pay the applicants the costs. He has relied on the case of; **Samuel Wafula Wasike -versus- Hudson Simiyu Wafula Civil Appeal No. 161 of 1993.**

28. The 1st, 2nd and 3rd respondents' filed joint submissions dated 6th of June, 2019 in which they state that they do not oppose the application for revocation of grant and have relied on their respective affidavits in response to summons for revocation/annulment of grant sworn on 10th October, 2017,during the hearing.

For the fourth respondent submissions were filed by Nduku Njuki & Company Advocate.

29. He submitted in which he has highlighted the facts deposed in the affidavit and the evidence adduced in this court. He submits that the respondent who had all along represented herself as Belinda Wanjiru Miano moved the court to have the grant confirmed, she set out the

mode of distribution as herself to receive an acre, her co-wife Hellena Wangechi Miano 1 and $\frac{3}{4}$ of an acre, and Stanley Ndegwa Mbuimwe 1 acre and the fourth respondent herein to receive $\frac{3}{4}$ of an acre and the grant was finally confirmed on the 27th day of September, 2016 and the record is clear it was done in the presence of Belinda Wanjiru Maino. It was long after this that the applicants' in no doubt in cahoots with 1st, 2nd and 3rd respondent brought this application which is purely to rob the 4th defendant of his entitlement. He urges the Court to make the following observations;-

(a) That the deceased had distributed his property during his lifetime and had allocated his son JOSEPH MWAI MIANO (deceased) his share which was half (1/2) acre.

(b) That the 3rd Respondent STANLEY NDEGWA MBUI-IMWE was a brother to the deceased and lived on this land therefore was entitled to a part of it which he had been given one (1) acre.

(c) That the deceased had two (2) wives, the 1st and the 2nd Respondents herein.

(d) That JOSEPH MWAI MIANO had a right to dispose of his land and that did not amount to intermeddling and that the 1st Respondent prosecuted a proper valid succession cause in Kerugoya High Court Succession Cause No. 163 of 2012 and later Kerugoya Chief Magistrate's Court Succession Cause No. 499 of 2016.

30. I have considered the application and all the submissions by the parties herein, the issue which arises for determination in this proceedings is revocation of grant.

Section 76 of The Law of Succession Act. which provides.

“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;

31. The proceedings are clear that a grant whether or not confirmed will be revoked where the proceedings to obtain the grant were defective where the grant was obtained fraudulently by making a false statement or concealment from court of material to the case, and by making of untrue allegations of facts essential to a point law to justify the grant notwithstanding that the allegations were made in ignorance or advertently.

32. The grant herein fits properly in conditions set out revocation of grant. The fourth respondent obtained the grant fraudulently as he was a stranger to the estate of the deceased. Although he claimed a purchasers right he admitted to this court that he had not bought any land from the deceased in this case, in whose estate this proceedings relate.

33. The fourth respondent has stated in this court that he was a purchaser, but in the petition filed in the lower court Form P & A 80 the respondent who was not related to the deceased and had no right to petition for the grant in priority over the deceased widows, children and grandchildren.

34. The proceedings to obtain the grant were therefore ab initio right from the word go. He had no claim over the estate of the deceased. The agreement which he displayed shows that he had entered an agreement with Mumbi Miano and Joseph Miano who were not the owners of the land, and their share of the estate of the deceased had not been determined, Furthermore the agreement was entered even before the deceased died.

35. The agreement was over agricultural land. The law requires that any transactions touching on agricultural land must be sanctioned by the consent of the Land Control Board, this provided under **Section 6 (1) of The Land Control Act** which provides that

“ each of the following transactions that is to say the sale, transfer, lease, mortgage, exchange, partition or other disposal of or dealing with any agricultural land which is situated within a Land Control Area is void for all purposes, unless the land control board or land the control area or division in which the land is situated has given its consent in respect of such transaction in accordance to this Act.”

36. The agreement which the respondent entered with the son of the deceased was null and void;

37. Firstly because the vendor had no legal capacity to enter into that agreement as he was not the registered owner of the land.

38. Secondly the agreement was null and void for want of the consent of the land control board.

39. Therefore the 4th respondent had no legal right even to file the proceedings which he filed in the Estate of the deceased, as he had no relationship with the deceased, firstly as a purchaser of his estate and, secondly as relative or as a dependant. The actions of the fourth respondent amounts to intermeddling with the estate of the deceased.

40. That the grant was obtained fraudulently by making false statement and concealment from the court of material facts and the making of untrue allegations of facts in points of law and manipulation of the process to actualize the grant.

41. The fourth respondent had no entitlement to the estate of the deceased. The respondent failed to disclose that the deceased was survived by several adult children whose names were omitted form P& A 5 and were never disclosed to the court at any time thereafter resulting in disinheriting the said children of the deceased who were entitled to inherit their father's estate.

42. I find that the circumstances in which the grant was obtained in this matter falls on all four to the requirements **under Section 76 of the Law of Succession Act** for a Court to revoke or annul the grant.

43. I need not belabor the point, there is enough evidence to warrant this court to revoke the grant.

44. I therefore order that the grant issued on 27th September, 2016 is revoked.

45. I direct that the matter shall be mentioned in the presence of all the parties so that they can agree on an administrator or this court will appoint one to move the Administration of the Estate forward.

I award the costs to the applicants payable by fourth respondent.

Dated, signed at Kerugoya this 29th day of May 2020.

L. W. GITARI

JUDGE