



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KERUGOYA

SUCCESSION CAUSE NO. 380 OF 2014

IN THE MATTER OF THE ESTATE OF THE LATE ZABLON MWANIKI GACHAU (DECEASED)

BEATRICE MUTHONI GICHUHI.....1ST APPLICANT

BILIA WANGUI CHUMA.....2ND APPLICANT

VERSUS

JOHN NJOKA NJERU.....1ST RESPONDENT

JANET WAMARWA.....2ND RESPONDENT

LUCY MUTHONI.....3RD RESPONDENT

AND

ANDREW MURIUKI WAMBU.....1ST INTERESTED PARTY

JUSTUS KIBUCHI GIKUNJU.....2ND INTERESTED PARTY

MICHAEL NGARI GIKUNJU.....3RD INTERESTED PARTY

JUDGMENT

This matter relates to the estate of **Zablon Mwaniki Gachau (deceased)** who died in the estate on 8th of February, 1987. A grant of letters of administration was issued to John Njoka Njeru on 13th June, 2000. It was later confirmed on 2nd February, 2001.

The estate of the deceased land parcel number **Mutira/ Kangai/89** was distributed as follows;

- Lucy Muthoni Gikungu - 1.1. Ha
- Janet Wamarwa Gikunju - 1.1 Ha
- John Njoka Njeru - 2.0 Ha.

What is now pending before this court is an application dated 9th July, 2014 filed by Beatrice Muthoni Gichuhi seeking orders under **Section 76 of The law of Section Act and Rule 44 of Probate and Administration Rules** that the grant confirmed on 30th January, 2001 be revoked and /or annulled on the grounds that the proceedings to obtain the same were defective in substance and the grant was obtained fraudulently by making of false statement and from concealment to the court of things material to the case of the applicant herein.

The applicant claims that the succession was conducted behind her back and failed to involve them in the Succession cause.

The applicants were daughters of Zablon Mwaniki Gachau the deceased and were entitled to inherit his estate yet they were disinherited and the court was misled about the existence of the same.

The applicants were contending that they were denied the an opportunity to be heard and the Succession cause was heard in a court that did have jurisdiction to hear the matter. The estate of the deceased exceeded Kshs; 150,000/=.

The respondents failed to disclose to the court that the deceased had children who are the applicants.

The applicants were the biological children of the deceased and also his dependants.

The respondents disinherited the applicants, yet they are wives' of the deceased brother that is the uncle to the applicants, and the 1st respondent is a nephew of the deceased, and they ought not to have inherited the estate, before the children of the deceased.

Further that the respondents failed to list any liabilities of the deceased to enable them be in the cause as creditors, and they lied to the court that they had paid debts for the estate which was untrue and not supported by any evidence.

That the grant was issued in error and ought to be nullified. The application is supported by the affidavit of Beatrice Muthoni Gichuhi sworn on 9th of July, 2014.

She has reiterated the above grounds. Safe to add that she recently learned that the land was not in her father's name, and on conducting an official search discovered that the land had been sub-divided.

She never participated in the proceedings, and urges the court to revoke the grant.

Beatrice Muthoni Gachuhi filed a supplementary affidavit on 3rd December, 2014 in which she has stated that 2nd and 3rd respondents are wives of their cousin one Gikunju and Gikunju was a son of Njeru (Wakamere) and that Njeru Wakamere and Zablun who is their father were brothers and were children of Gachau.

John Njoka Njeru was the administrator of the estate filed a replying affidavit on 8th of June, 2015. However, before the application could be heard and determined on 11th October, 2017 the court was informed that he had passed away.

A further replying affidavit was filed by Andrew Muriuki Wambu an interested party and depones that he was not a party in the succession cause number 30 of 2000 before the lower court Kerugoya. He further states that he is a purchaser for value with no notice for defect that he bought the parcel of land of Mutira/Kangai/89 and one John Njoka Njeru was registered as proprietor of Mutira/ Kangai/ 1960 and who transferred to one Nahashon Muthee Mureithi and Mureithi sold to me on 23rd September, 2002.

He further states that the application cannot revoke his title after confirmation of grant and he is been dragged into litigation for no reason and is demanding that he be paid cost.

He further states that he has developed the said parcel of land extensively.

Micheal Ngare Gikunju an interested party swore an affidavit sworn on 26th of June, 2015. He depones that, land parcel Mutira /Kangai/ 89 was initially registered in the applicants' father and himself and 2nd interested party are sons of Peter Gikunju Njeru. He depones that the land parcel was sold in the year 1962 but Peter Gikunju Njeru and John Njoka reclaimed the land and the same reverted back to Zablun Mwaniki Gachau where it was agreed before the elders that Peter Gikunju and John Njoka would take over the land.

The deceased later gave the land to Peter Gikunju and John Njoka and thereafter the deceased never cultivated or utilized the land.

He depones that the applicants' were fully aware of the lower court succession cause at the time of filing for letters of administration on confirmation of grant which they fully participated.

That the parties appeared in court on 30th day of January, 2001 before Hon. Njagi for purposes of establishing whether the parties had agreed and subsequently the cause was confirmed as per the affidavit in support of the application dated 11th December, 2000.

The applicants were listed in the affidavit in support for confirmation of grant as beneficiaries.

The title to the suit land was closed on partition on 25th April, 2002 only for the applicants to wait for over 12 years to bring the instant application.

He submits that the estate has already transmitted and transferred to 3rd parties.

He further states that he has developed the parcel and built a homestead.

He further depones that there were no concealment of material facts and neither was the grant obtained fraudulently nor were false statements made and that the application is an abuse of the court process.

The parties agreed to proceed by way of oral evidence, evidence was adduced by Beatrice Muthoni (PW1) and she adopted her affidavit in support of the application and supplementary affidavit as her evidence (as analyzed above).

In cross - examination she stated that she did not know whether the chief's letter which was issued before filing the succession had included her name, and that she came to know recently about the gazette notice.

She admitted that the affidavit in support of confirmation of grant had listed her and her sister, but denied that they attended court.

She further stated that; they never lived on land parcel Mutira/Kangai/89 and that the person who was owed money is living on the land and she told the court that her father told her that the money was refunded.

She further told the court that, letters of administration were issued to John Njoka Njeru who passed away during the pendency of this case.

She further told the court that her deceased father was not buried on the land.

Nelson Githaka Thirayu testified that he witnessed money been refunded, the one receiving money was Esther Kabari he refunded Kshs; 3,000/=.

The money was from Kibuchi. Esther Kabari was staying on the land, but he did not know whether she had bought the land after money was refunded Gikunju started using the land until he died.

He told the court that he could not remember when Gikunju died. Kibuchi was staying at Gatitu and Muthambi and that is where he was living with his family.

On cross –examination he said that the deceased was Kibuchi Gacharu and that Zablon was his baptism name.

He further told the court that the wife of the deceased was not buried in the land in dispute and the deceased was buried in the land of John, who took him when he fell sick as his two daughters were married.

He further told the court that he was not aware that the land had been sold to somebody else.

The respondent called **Janet Wamarwa Gikunju (Dw1)**, she told the court that Njoka went to court and the land was distributed to them and she told the court that herself and Gikunju bought land from Kibuchi, the land was sold to Karoki. He then said he would not buy land where it was very dry, and money was refunded to him by Kabari.

Gikunju in turn refunded money to Kabari. Karoki had bought the entire land. She then gave her portion to Kibuchi and Ngare who are his children and was left with her.

The witness in cross –examination told the court that Gikunju and Njoka were given land by the clan, Zablon was given land at Gatitu as he was going round after he sold his land, and he lived at Gatitu with his wife and two daughters. The wife of Zablon is buried at Gatitu.

The daughters of Zablon have never used the land. She further told the court that Zablon died in her home and was buried on their land.

Lucy Muthoni Gikunju (DW2) she told the court that the grant was properly issued because the applicants were in court. They were told to go and agree as Janet wanted the land to sub-divided into two portions and they came back to court and agreed on how the land would be distributed and the applicants were in court.

She further told the court that the deceased had sold land to one Karoki Kinguru, Gikunju returned the purchase price of the land. He later sold the land to Kabari since Kabari had not paid the whole purchase price, he borrowed the money and returned money to him and that is why Zablon Mwaniki's land was in their hands.

The money which Gikunju refunded was ordered by the court at Embu in a case between Gikunju and Esther Kabari and Zablon was still alive when the case was in court.

She further told the court that she wants the land to remain the way it was sub-divided because Zablon had sold his land.

In cross-examination she told the court that John Njoka is the one who collected the Chief's letter and she signed the consent and they all came to court.

She had consented to the land been shared between John and Gikunju as both of them had paid for the land.

He further told the court that they had informed the applicant when the case was filed in court.

Andrew Muriuki Wambu (DW3) he testified that he bought land from Nahashon Muthee Muriuki and did not know where he bought the land from, but came to learn that it was sold to him by John Njoka Njeru and it was bought from Zablon Mwaniki. He has developed and built on the land and he states that he did not see anybody coming to interfere with the land.

He prays that the application be dismissed and has relied on his affidavit which I have analyzed above.

Micheal Ngare Gikunju (Dw4) stated that he was a beneficiary of land parcel number **Mutira/Kangai/89** when his mother was given her

portion and Janet Wamarwa Gikunju gave him 1 acre and gave his brother 1 acre.

He joined the case as an interested party as he lives on the land and he is giving evidence on his own behalf and on behalf of his brother.

The parties filed written submissions for the applicant, submissions were filed by Anne Thungu & Company Advocates.

She submits that: the Succession cause was commenced with a chief letter issued by Chief Kangai on 24th December, 1999 and he listed the applicants' as the deceased daughters and the respondents.

The 1st respondent was introduced as a step son which was a lie since his father is Njeru and not the deceased, and the 2nd and 3rd respondents were introduced as the 1st and 2nd wives of the step son, which is a lie as their husband is Gikunju not a son of Zablon Mwaniki Gachau.

There was no indication that the applicants were present when this letters were issued. However, it is important to note here that the applicants were listed in the Chief's letter as daughters' of the deceased who were married.

It is therefore not true that the Succession was commenced behind the applicants back, the chief's letter is supposed to introduce to the court the lawful beneficiaries and the applicants' were listed in the letter as beneficiaries as daughters of the deceased who **under Section 29 of The Laws of Succession Act** were first line beneficiaries. The chief's letter has not concealed this fact.

It is also submitted that the applicants' did not sign the consent forms consenting to the 1st respondent being administrator of their father's estate.

The applicants had priority to file succession cause of their father's estate and if the respondents wanted them to do so the proper procedure was to serve them with citation.

This cause was commenced irregularly with persons who had no priority to file and without the applicants been given a chance to sign a consent form for the consent of an administrator.

That in the summons for confirmation of grant, the 1st respondent lied to court that the deceased was survived by the applicants and respondents as children and dependants'.

She further submits that the affidavits were full of falsehoods, where the 2nd respondent lied that Lucy Muthoni was the 2nd wife of the deceased which was a lie.

That the record of the court does not state that the applicants were present in court, and it is clear that the applicants never attended any single time before the grant nor even on the date of 30th January, 2001 when the grant was confirmed.

That the applicants' were never informed and they were served with summons.

It is submitted that the law provides that assets and liabilities are normally dealt with in the distribution of the deceased estate and hence it was irregular for the respondent to inherit the deceased estate due to money they may be claiming from him and call themselves beneficiaries instead of creditors and the grant was issued through false statement and concealment from court of the real issues.

That the 2nd and 3rd respondents were not dependants' and the respondents failed to prove that the applicants agreed in the distribution they did of their father's estate.

She submits that the applicants have proved grounds for revocation of grant and they urge the court to revoke the application.

For The RESPONDENTS it is submitted that;

The 1st respondent passed away on 28th of July, 2015 when this matter was still pending.

The 1st respondent was not substituted by any of the parties and the court directs that the hearing proceed as it is.

They submit that the applicants have failed to prove their case as provided for by law as far as annulment and revocation is concerned.

The applicants did not prove that the letters of administration were defective in substance and there was no objection to the Petitioner getting letters of administration, and upon expiry of six months the application for confirmation of grant was filed and the applicant and the 3rd respondent were listed in the supporting affidavit.

That when the matter came up for confirmation of grant on 9th January, 2001 before the Principal magistrate there were protests filed by 2nd and 3rd respondent, and it is alleged that the court did not indicate if the beneficiaries were present on that day. But that also goes for the petitioner and other protestors, and the court could not proceed to confirm the grant when all the beneficiaries were not there.

On 30th January, 2001 the parties appeared though again the court did indicate whether they were present or not, but a consent had been reached and the application for confirmation was allowed as prayed by the petitioner and the applicants having been present and failed to object they cannot be heard to say that they were not aware of the Succession cause after 13 years.

The property was distributed and the cause was closed and that from the foregoing no defect would warrant the grant to be revoked.

The applicants ought to have appealed against the findings of the lower court. No evidence was tendered pertaining to any fraud whatsoever, or concealment of things material to the cause.

On the allegation that the court had no jurisdiction, they urge the court to note that the value of the estate was listed at Kshs; 100,000/= which was within the allowed pecuniary jurisdiction of the lower court.

They further submitted that the confirmation was done the way it was done as evidence was tendered, that the deceased had twice sold the land and the husband of the 2nd and 3rd respondent paid back the purchase price so that they can own the parcel of land and Njoka the 1st respondent had helped to refund the money too, hence the reason he got a share of the estate.

It follows that the estate of the deceased could not go to the applicants as there was nothing for them to share, as the father had sold the whole of his land, and went to stay with the 2nd and 3rd respondent, who were feeding and taking care of him as the daughters were married,

He submitted that the applicants are coming about after the New Constitution came into force in 2010 and directed that women should also share the estate of their deceased father.

That before 2010 the courts had always held that married women could not inherit the estate of the deceased further, but after 2010 the law changed.

That the 2nd and 3rd respondents were dependants after they redeemed the land and the applicants and the deceased never cultivated or built on the Shamba.

That the parties agreed that, the grant was issued to the person who redeemed the parcel of land and finally they submit that the 1st respondent who was the administrator died after the grant had been confirmed and therefore the grant cannot be revoked and annulled.

The application should therefore be dismissed.

They further submit that the respondent had not lied about the relationship with the deceased it is common in the Kikuyu context that they could not refer to the deceased as otherwise but as a relative.

For the 1st Interested Party; Submissions were filed by Maina Kagio & Company advocates;

It is submitted that the 1st interested party is a purchaser, having purchased land parcel number Mutira /Kangai/1960 measuring 1 acre from one Nahashon Muthee Mureithi who had purchased the same from the administrator one John Njoka Njeru.

They further submit that the application lacks merit and is bad in law. And the legal issue is; it is not disputed that the 1st respondent herein Petitioned for grants of letters of administration in respect of the late Zablon MWaniki Gachau.

The grant had been issued in Kerugoya Principal Magistrate court Succession cause No. 30 of 2000. It was confirmed on 30th January, 2001, and the only property for distribution was land parcel number Mutira/Kangai / 89.

The 1st respondent caused the land parcel to be transmitted to the beneficiaries and the title of land parcel number Mutira /Kangai / 89 was closed on partition giving rise to among others Mutira/Kangai /1960, which was later sold to 1st interested party in 2002, and the revocation of grant was filed in 2014.

The administrator died on 11th October, 2017 and the court stated that since it was over one year since the 1st respondent passed away the claim against him had abetted and the cause was to proceed amongst the surviving respondents.

The 2nd and 3rd respondents were neither petitioners nor administrators of the estate of the deceased. They were merely beneficiaries of the estate of the deceased.

The interested party poses the question as what is the legal standing of the applicants case upon the death of the administrator, submits that there was no appeal against the order, and the orders of 11th October, 2017 being in force it is obvious that there was no one to respond to the applicants' case, as the person who had been alleged to have obtained the land is no more.

The claim was withdrawn by way of pronouncement by this court that it had abetted and the applicants case collapsed at that stage.

He relies on the case of; **Charles Gatimu Kamuthi -versus- Evan Kaburu Kamuthi. H.C. Embu Mis. Application No. 1 of 2001** where the court held that;

The application for revocation of grant had been overtaken by events, for the reasons that;

“ Firstly the administrator died after he had completed the administration of the estate of Kamuthi Munyiri and had given each beneficiary a title.

Secondly it follows therefore, that the applicant who wants the administrator to give him a share of that estate is coming too late

Thirdly the administrator of the estate Kamuthi Munyiri having died it will be improper for the applicant to proceed with the summons for revocation of grant, as doing so will amount to proceeding against a deceased person and the law does permit that.

Fourthly there are no provisions under the law of Succession Act, allowing substitution of a deceased administrator or executor of the estate of another person, and this is rightly so bearing in mind the special process through which a person has to pass before that person becomes an administrator or an executor as such an administrator or executor cannot be imposed by the court upon beneficiaries and other interested members of the family and relatives of the deceased, whose estate the deceased administrator or executor was administering or executing.

The above been the position I see no point in having this summons dated 5th January, 2001 for revocation or annulment of grant issued to Evans Kaburu Kamuthi stood over generally as it serves no useful purpose having a case which is overtaken by events remaining pending.”

He submits that the facts in the case were exactly the same as in this case, and we urge the court to be persuaded by the same ruling.

It is further submitted that the interested parties having bought land from the one who had purchased from the administrator, **Section 93 (1) of the Law of Succession Act** protects the interested party who is a purchaser.

He submits that there was no evidence that the interested party was aware of the fraud, if at all there was any and relies on the case of **Lawrence Mukuri -vrs- Attorney General & others (2013) eKLR** where it was stated that the condition to be met by an innocent purchaser are that: the purchaser

- (a) holds a certificate of title**
- (b) he has purchased the property in good faith**
- (c) he has no knowledge of the fraud**
- (d) the vendor had apparent valid title.**
- (e) he has purchased without notice of any fraud**
- (f) was not party to the fraud.**

It is submitted that the first respondent obtained a title after a lawful court process, he sold the land to one Nahashon Muthee Mureithi who is not a party in this case, who then sold the land to the interested party.

For all intents and purposes the 1st interested party qualifies to be an innocent purchaser for value without notice.

It is further submitted that on the merits the case has no merit, it is not in dispute that the deceased has sold the said land and that the purchase price was refunded.

The respondents position is that they are the ones who refunded the purchase price and the deceased never occupied the land upon refund of the money nor did the applicants.

The land was been cultivated by **Peter Gikunju and John Njoka Njeru** who were brothers and nephews of the deceased, and further that the deceased and his wife were not buried on the suit land.

He submits that the revocation of confirmation of grant has been overtaken by events, and is without merit and they urge the court to dismiss the same with costs.

ANALYSIS AND DETERMINATION

I have considered that the application, the affidavits by the parties the evidence tendered in court and the submissions.

The Issues which are arise for determination are'

1. Revocation of grant.
2. Rights of the Interested parties.
3. Death of administrator

1. Revocation of Grant;

The law is anchored under Section 76 of the Laws of Succession Act and Rule 44 of The Probate and administration rules.

Section 76 (a) b and c of the Law of Succession Act 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;

a party seeking to have a grant of letters of confirmation revoked is required to prove that the proceedings were defective in substance, the grant was obtained fraudulently by making a false statement or concealment from court of something material to the case and by means of untrue allegations of fact.

It is trite law that he who alleges must prove. It is unfortunate that the administrator died and the court will not have the benefit of interrogating him as to what exactly happened.

However, the burden is on the applicant to prove the conditions for the revocations of grant. The applicants bears the legal burden to proof the allegation. Section 107 of The Evidence Act provides;

Evidence Act.

Burden of proof

(1) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.

(2) When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.

108. Incidence of burden

The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side

109. Proof of particular fact

The burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.

The applicant had the legal burden to proof the allegation in Halsbury’s Laws of England 4th Edition Volume 17 paragraph 13 and 14 describes the legal burden as follows;

“ the legal burden is the burden of proof, which remains constant throughout a trial, it is the burden of establishing the facts, and the contentions, which will support a parties case. If at the conclusion of the trial , he has failed to establish this at the appropriate he will lose. The legal burden of proof normally rests among the party desiring the court to take action thus a claimant must satisfy the court or tribunal that the conditions which entitle him to an award have been satisfied in respect of a particular allegation, the burden lies upon the party for whom substantiation of that particular allegation is an essential of his case. There may therefore be, separate burdens in a case with separate issues.”

The legal burden in a case is supposed to be discharged by way of Evidence with the corresponding party having a corresponding duty of adducing evidence in rebuttal. This is what constitutes evidential burden.

In this case the applicant had the legal and evidential burden to proof that they were not informed about the Succession and that the Succession was done behind their backs.

I find that there is evidence which strongly points to the fact that they were fully aware of the proceedings in the magistrate's court.

The Chief's letter disclosed that they were married daughters of the deceased and the proceedings before the trial court show that it is likely that they were before the Trial court and they were mentioned in all the documents which were filed by the administrator.

Including the affidavit in support of the application for confirmation of grant and from the proceedings of the trial magistrate the parties were before court.

It is expected that the trial magistrate read paragraph 3 of the affidavit of the administrator which indicated that the deceased was survived by children and dependants who were listed under that paragraph, and the names of the applicants were included and the trial magistrate allowed the application for confirmation of grant and stated that by consent grant is confirmed.

The grant was confirmed by consent in terms of the application for confirmation dated 11th December, 2001.

The proceedings before the magistrate on 9th January, 2001 the petitioner and beneficiaries were present in court and they were given time to go and consult and when they returned there was a consent.

There is nothing to prove that the proceedings were defective in substance.

This grant was confirmed and the Land was sub-divided. The applicants admitted that they were aware that the land had been sub-divided and sold but they never took any action for a period of 13 years.

It has been proved and the applicants accepted that the deceased had sold the land, and they accepted in court that they had never used the land. The deceased never used the parcel of land in his lifetime.

His wife was not buried on the land, and the deceased himself was not buried on this land.

The contention by the respondents is that they were entitled to this land having redeemed it twice after the deceased sold it.

It would seem that the applicants' were also aware of this facts and that is why they never objected when the first respondent filed succession in court and the proceedings show that they were present in court.

The respondents had no burden to prove. The legal burden was on the applicants to prove that the proceedings were defective or that they were filed behind their backs.

My finding is that they have not discharged this legal burden and the 1st applicant who swore the affidavit and also gave evidence in court did not strike me as truthful a fact she displayed when she said she was married and that she left and went to live with her sister and yet her husband was sitting in court and she said the husband does not own land, and in the same breath said that her husband owns $\frac{3}{4}$ of land, and she also admitted that she was aware that somebody by the name Wambu was using the land from 2002, and so when she depones that she only came to know about the land having been sold in 2014 she could not have been telling the truth.

They were aware of this fact all along and never came to court.

From the evidence, the applicants must have known that the deceased had no claim over the land and that is probably the reason why though they were in court during the Succession Proceedings, they never objected.

Having considered the circumstances of this case, the applicants have failed to establish the ground provided Under Section 76 above to warrant the revocation of grant.

2. Rights of an Interested Party

The act recognizes the rights of interested parties who are purchasers of the estate of a deceased person and provides that the validity of a transfer to a purchaser will not be affected by revocation of representation. **Section 93 (1) of The Law of Succession Act provides:**

“ A transfer of any interest in immovable or movable property made to a purchaser either before or after the commencement of this Act by a person to whom representation has been granted shall be valid notwithstanding any subsequent revocation or variation of the grant either before or after the commencement of this Act. “

The only instance when the transfer of immovable property will not be upheld is where it is sold before the confirmation of grant. **Section 82 (b) (2)**

“no immovable property shall be sold before the confirmation of grant.”

In all other instances, a transfer to a purchaser of movable or immovable property by a person to whom representation has been granted shall be valid, notwithstanding any subsequent revocation or variation of the grant.

In this case the interested party did not purchase the land from the administrator of the estate, he bought the land from a person who had bought it from the administrator, and therefore the Interested party is an innocent purchaser for value without notice of any defect in title. The case of; **Lawrence Mukuri versus - Attorney General & Others (2013) eKLR refers.**

“the interested party holds;

(a) A certificate of title

(b) He purchased the property in good faith without the knowledge of any fraud.

(c) The vendor had a valid title and in case there was any fraud he was party to that fraud.

(d) The interested party testified that he bought the land from the vendor who was in occupation of the land and continued in quiet occupation until this matter came up.

His validity is title and cannot be challenged, and is protected **under Section 93 (1)**

Similarly the 2nd and 3rd interested parties were given land which was given to one of the respondents and they were not aware of any fraud.

The land was transferred to them after the confirmation of grant and their titles are therefore protected.

3. Death of Administrator;

It is not in dispute that the administrator the 1st respondent passed away during the pendency of this application and this matter was brought to the attention of the court and the court ordered the parties to proceed.

Upon the death of an administrator he will not be substituted but a fresh application for a grant of representation has to be made as provided **under section 51 of The Act** and the process started all over again.

This is because the law of Succession Act does not provide for a substitution of a personal representative who dies in office.

The situation in this case is that the administrator died after the estate was transmitted and transferred and the situation is different in this matter from a situation where the administrator dies in office as provided **under Section 81.**

IF an administrator dies before the administration of the estate has been concluded and the estate has not been distributed to the beneficiaries, an administrator cannot be substituted but the process has to start all over again. In which case, the grant dies with the administrator and a fresh grant has to be obtained in the manner provided by the law governing the transmissions in the property of the deceased persons to their beneficiaries.

The intended administrator has to present an application as provided under **Section 51 (1) of The Act and guided by Section 66** on the order of preference to be considered on the persons to administer the estate where the deceased died inte-estate.

In this case of; Karumwa Maina -versus- Susan Wanjiru Mwangi (2013) eklr quoted with approval in their case of; **Popp Ngule, Margaret Wangui (deceased), and Another -versus- Nyota (2018) eklr** it was stated that;

“ a grant of representation is made in personam. It is specific to the person appointed, it is not transferrable to another person, it cannot therefore be transferred from one person to another.

The issue of substitution of an administrator with another person should not arise. Where the holder of the grant dies, the grant made to him becomes useless and inoperative and the grant exists for the purpose only of been revoked. Such a grant is revocable under Section 76 of the laws of Succession Act.

Upon it revocation a fresh application for grant should be made in the usual way, following procedures laid down in the law of Successions Act and the probate and administration rules.

I agree with the respondents that there cannot be a substitution of the dead administrator by his wife in the manner proposed by the applicant.”

The emphasis is that the Law of Succession Act has no provision of substitution of a sole administrator.

The question is what about where the administrator dies after he has completed the administration of the Estate and transmitted to the beneficiaries.

The administration of the estate ends there.

The administration of the estate cannot be challenged by way of an application for the revocation of grant because there is no party or person

who can answer to matters which may arise.

In other words there will be no person to defend the application for revocation of grant.

Indeed even in this case all the submissions of the applicant heaped blame on the 1st respondent who was the administrator and is now deceased.

It is tantamount to suing a dead person who is not before the court to defend himself. The '**Old adage**' goes that dead bodies tells no tales.

The 2nd and 3rd respondent were not, and even in this application are not the administrators of the estate of the deceased.

I am persuaded by the decision of Justice Khamoni in the case of; Charles Gatimu Kamuthi –versus- Evans Kaburu Kamuthi (supra) that the application for revocation or annulment of grant has been overtaken by events as it is only the administrator to whom the grant had been issued who can answer in any allegations on the impugned grant.

In this case the application has not only been overtaken by events but the claim by the applicants is now considered as time bad as provided under **Section 30 of The Act**. which provides;

“no application under this part shall be brought after a grant of representation in respect of the estate to which the application refers has been confirmed as provided by Section 71 of The Act.”

The court under **Section 26 of The Act** has discretion to order such reasonable provision as the court deems fit shall be made for that dependant out of the deceased's' net estate.

The applicants' were before the court, before the grant was confirmed and it is clear there were some disputes and parties were referred to go and discuss and when the party went back to court, they informed the court they had agreed on the distribution of the estate and the court confirmed the grant by consent.

Having failed to claim a share of the estate while they were clearly before the trial court thirteen years later after the grant was confirmed and the administrator has died their claim is time barred.

In conclusion I find that the application is without merit, the applicants claim has been overtaken by events, the estate has been distributed to third (3rd) parties who are innocent purchasers for value without notice and their claim is time barred.

I therefore dismiss the application with costs to respondents, and the interested parties.

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

L.W. GITARI

JUDGE