



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERUGOYA

PROBATE AND ADMINISTRATION

MISC SUCCESSION CAUSE NO. 92 OF 2013

IN THE MATTER OF THE ESTATE OF : KANYI MANDERI (DECEASED)

AND

JOHN MUREITHI GATOGO.....PETITIONER/APPLICANT

VERSUS

LAWRENCE MUNENE NDAMBIRI.....RESPONDENTS

RULING

1. The applicant John Mureithi Gatogo filed a Summons for Revocation of grant dated 12.11.2010 under Section 76 of The Law of Succession Act and Rule 44 of The Probate and Administration rules.

2. They seek an order that the grant of letters of administration issued to Gatogo Kangi on 9th March, 1994 on the ground that it was obtained fraudulently by making a false statement or concealment from the court for something material to the case that is to say the respondent misled the court by saying that he was a dependant of the deceased.

3. In the supporting affidavit on 12th November, 2010 he depones that the deceased Kangi Manderi whose estate is in issue in this case died in 1994 as shown on the death certificate annexure JMG1 the grant of letters of administration was issued to Gatogo Kangi.

4. The applicant is a grandson for the deceased by virtue of been the son of Gatogo Kangi who is the son of the deceased Kangi Manderi and he deposes that the respondent was not a dependant of the deceased.

5. He submits that Gatogo Kangi is now deceased having died on 19th February, 2001.

6. That the respondent was not a dependant of the deceased Kangi Manderi and he is not in any way related to the deceased.

7. The respondent was not a rightful heir of the deceased since he was not a dependant. The rightful heirs are himself and his mother.

8. That the respondent is claiming 1.5 acres of land from Gatogo Kangi the respondent and is intending to evict them land parcel number Mwerua/ Kagio -ini / 762 Kangi Manderi did not give land to his father as he had given land to his school.

9. The respondent Lawrence Munene Ndambiri has sworn a replying affidavit on 9th February, 2012.

He depones that letters of administration was issued to Gatogo Kangi on 29th March, 1994 and he applied for the grant to be confirmed in his name. After the grant was issued, he sold a portion of land to him.

He later died on 19th February, 2001. The application is misconceived and is an abuse of court process.

That he went to the land board with Gatogo Kangi obtained a consent and mutation forms were presented in the land registry for registration and partition of titles and new numbers given by land registration.

He further depones that he never claimed the estate of the deceased as a dependant. The rightful heir was Gatogo Kangi.

He further states that he had paid the full price for the two acres, but he decided to forego half an acre.

He further depones that he took the estate of the deceased KAngi Manderi because he was the only son of Kangi MANDeri.

This application was disposed off by way of written submissions.

For the Applicant it is submitted that;

Gatogo Kangi misled the court by saying that he is a dependant of the deceased and after he was appointed administrator he sold land to Lawrence Munene Ndambiri measuring 1.5 acres.

He submit that under Section 35 (1), 37 and 55 (1) of The laws of succession Act. The administrator had no capacity to sell 1.5 acres to the respondent and this was intermeddling with the estate which is also a criminal offence. He has relied in the Case of ; Mithamo Karungaru, (Deceased) , Irene Wanjiru Mithamo (Petitioner) –versus- Simon Kunyaki KARungaru (Protestor) Succession Cause No. 684 of 2012. H.C. Of Kenya at Nyeri.

For The Respondent;

It is submitted that the applicant has for a long time been trying to mislead the court both a t Nyeri and Kerugoya.

The applicant is misleading the court that Lawrence Munene NDambiri was an administrator of the estate of Kangi Manderi. However, he is the real son of Kangi Manderi (deceased) by name Gatogo KAngi who is also the father of the applicant herein who obtained the grant of letters of administration of the estate of his father and not Lawrence Munene who is a purchaser for value for the administrator.

Lawrence Munene only purchased a portion of the land in issue after the grant was given to the rightful son Gatogo Kangi. It is submitted that Justice Makhandia (as he then was) at High Court Nyeri had rightfully pointed out that John Mureithi Gatogo cannot annul the grant given to his father Gatogo Kangi since the estate belongs to his grandfather.

That this court on 13th April, 2018 held that the grant in favour of the same father cannot be annulled by an application of one of the sons. This two sons of Gatogo Kangi will never let Lawrence Munene Ndambiri enjoy the fruits of sweat and ruling of Judgment of the court and yet there is an order to stop them further.

The case must come to an end. Munene Ndambiri only purchased the land after the grant was issued and have not done anything wrong.

The applicants to pay for the many applications he has been filing in court to make him realize that a court of law is not a football field.

That the application be dismissed.

I have considered the application and the submissions by the parties.

ANALYSIS AND DETERMINATION

The issue which arises is revocation of grant where the administrator has died.

The circumstances in this case are that the administrator is now deceased. He obtained the letters of grant of administration in Succession cause No. 146 of 1993 and the grant was confirmed on 9th March, 1995.

The only property of the Estate of the deceased was land parcel **Mwerua/ Kagio-ini/ 762** was distributed to Lawrence Munene Ndambiri 1.5 acres and Gatogo Kangi 0.9 acres. Gatogo Kangi died on 19th February, 2001. This was six years after the grant was confirmed. Vide an application filed by Eric Kariuki Gatogo dated 10th April, 2015 the applicant was seeking to be substituted in place of Gatogo Kangi.

The Court gave a ruling in that application relying on the case of;

Lawrence Okutu Nandwa & Another -versus- John Atemba Kojwa C.A. Civil Appeal No. 306 of 1998 at Kisumu which was relied on the in case of John Karumwa Maina -vs- Susan Wanjiru Mwangi (2015) eklr where it held that a Court should not issue a grant to a person who has not fought for it.

The Judge stated as follows;

“ A grant of representation is made in personam. It is specific to the person appointed. It is not transferable 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 a grant dies, the grant made to him becomes useless and inoperative and the grant exists for the purpose only of being revoked. Such grant is revocable under Section 76 of the Law of Succession Act. Upon revocation, a fresh application for grant should be made in the usual way, following procedures laid down in the Law of Succession Act and the Probate and Administration (Rules). I agree with the

respondent that there cannot be a substitution of the dead administrator by his wife in the manner proposed by the applicant.

Based on this authority and also the case of; ***Julia Mutune M'Mboroki -versus- John Mugambi M'Mboroki & 3 Others (2016) eklr.*** I held that the application for substitution of the administrator was without merit and was not properly before this court and dismissed the application.

The applicants' has brought an application for revocation of grant. The administrator has not been substituted. This court gave directions on 11th December, 2018, held that the application for revocation of grant could proceed on merit.

Having considered the application for revocation of grant, I find that it has no merit.

The administrator of the estate was Gatogo Kangi who was a son of the deceased. He was therefore a dependent as defined under **Section 29 (a) of the Law of Succession Act.**

“ the wife or wives, or former wife or wives and the children of the deceased whether or not maintained by the deceased immediately prior to his death.”

The Respondent Lawrence Munene Ndambiri was not a co-administrator of the estate. He has stated that he was a purchaser and his evidence has not been controverted.

A Purchaser for value **under Section 93 (1) Of Law of Succession Act.**

“ 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 act recognizes the right of a purchaser of the estate of the deceased person and provides that the validity of a transfer to a purchaser will not be affected by revocation of representation.

The only instance when the transfer of immovable property will not be upheld is where it is sold before the confirmation of grant as provided Under Section 82 (b) (ii)

“ 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.

The 2nd respondent purchased the land after confirmation of grant.

He obtained consent of the Land Control Board after the grant was confirmed. He was a purchaser for value without notice of any defect in title. In the case of; **Lawrence Mukuri - Attorney General & Others (2013) eklr.**

Refers;

The respondent has a certificate of title he purchased the property in good faith without the knowledge of any fraud. The vendor had a grant which was issued by the court, and as an administrator he could pass a good title under the confirmed grant.

The validity of his title cannot be challenged and is protected under Section 93 (1) of The Laws of Succession Act.

The applicant claim to be grandchildren of the deceased. They had no right to succeed the Estate of the deceased when their father was still alive.

On merits, therefore even on consideration of the circumstances in this application the application has no merit. The grant which was obtained by Gatogo Kangi and confirmed was lawfully issued. There would be issue for this court to revoke it.

Death of Administrator

It is not in dispute that the administrator of the estate died long after the grant was confirmed and upon a death of an administrator he cannot be substituted. This is because under the Law of Succession Act there is no provision for substitution of a personal representative who dies in office or after the grant has been confirmed.

The Situation in this case is that the administrator died after the estate was transmitted and transferred to the respondent. If an administrator dies after the administration of the estate has been concluded he cannot be substituted.

The issue of substitution of an administrator with another person does not arise. The administration of the estate must end at that point and the administration of the estate cannot be challenged by way of revocation of grant because there is no party or person who can answer to

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

The application cannot be prosecuted when there is no party to sue or respond to the issues which may arise like the present application.

I am persuaded by the decision of: Justice Khamoni in 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 I s 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.”

In this case the decision was that the application for revocation of grant has been overtaken by events as it only the administrator to whom the grant has been issued who can answer any allegation of the impugned grant.

This is the situation in this case;

The applicants have been advised in this court at High court Nyeri and before this court that there can be no substitution of the administrator and no amount of applications can change this positions.

The grant was executed and any application for revocation of grant has been overtaken by events.

In view of the foregoing I find that the application is without merit and I dismiss it with costs to the respondents.

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

L.W. GITARI

JUDGE