



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KIAMBU

SUCCESSION CAUSE NO. 5 OF 2016

IN THE MATTER OF THE ESTATE OF BEATRICE WANJIKU NG'OK ALIAS

BEATRICE WANJIKU NG'OI ALIAS WANJIKU NGOI (DECEASED)

TERESIAH NJOKI NJOROGE.....1ST APPLICANT

YAYHA MGAYA KANYONJI.....2ND APPLICANT

VERSUS

SIMON MAIMBA MBUGUA.....1ST RESPONDENT

SIMON MAINA MWANGI.....2ND RESPONDENT

MATTHEW MBUGUA KARANJA.....3RD RESPONDENT

RULING

1. For determination is the Summons for Revocation or Annulment of Grant brought under Section 76 of the Law of Succession Act , and filed on 11th May, 2016 primarily seeking that the grant of letters of administration made to **MOSES NJOGU NDIRANGU** *vide* Kiambu CM's Succession Cause Number 268 of 2013 be revoked. On grounds inter alia that the proceedings to obtain the grant were defective in substance and that the grant was obtained fraudulently.

2. **TERESIAH NJOKI NJOROGE** and **YAHYA MGAYA KANYONJI** (the Applicants) swore the affidavit in support of summons for revocation of grant. They described themselves and other listed beneficiaries as children of the deceased who died possessed of several properties .They stated that they discovered that their brother **MOSES NJOGU NDIRANGU** had petitioned for the grant of letters of administration in respect of the deceased's estate without their knowledge and consent. It was their contention that the grant was obtained fraudulently by misrepresentation as the said sibling represented to the Court that the deceased was survived by four beneficiaries and that her estate comprised of only one property, which representations were false.. They asserted that the deceased's properties have since been transferred to strangers who have obtained titles thereto.

3. **SIMON MAIMBA MBUGUA** the 1st Respondent herein filed a replying affidavit on 2nd June, 2016 in opposition to the summons. He deposed that the Applicants are self-seekers as no consent of other beneficiaries has been obtained by them and that, in any case, there was an apparent dispute as to the beneficiaries of the deceased's estate. He contended that his father **Eliud Mbugua Njoroge** a deceased son to the deceased was entitled to benefit from the deceased's estate and in that regard, Moses Njogu Ndirangu the appointed administrator, had facilitated the deponent's acquisition of titles at Ngong Land Registry. He denied the claims that the grant was obtained fraudulently and asserted that the Applicants recourse lies in another forum as the title to the suit property had already passed to third parties.

4. The Applicants filed a supplementary affidavit where they deposed that the Administrator illegally transferred the deceased's property to himself and the 1st Respondent as the application for confirmation of grant had not been made or grant confirmed in Kiambu CM's Succession Cause No. 268 of 2013. The 1st Respondent accused of having illegally transferred the deceased's land parcels to the current registered owners and hence his claim that the said titles cannot be cancelled could not stand.

5. Subsequently, the Court directed that the summons be heard by way of *viva voce* evidence. **YAHYA MGAYA KANYONJI** testifying as PW1 relied on his supporting and supplementary affidavits and annexures thereto as his evidence-in-chief. He urged the court to revoke the grant and reverse the transactions in respect of the deceased's assets reiterating that the grant issued in the Kiambu CM's succession cause was never confirmed. During cross-examination, he stated that though the deceased's family had agreed that the administrator should keep records in regard to the deceased's estate and to consult them concerning the filing of succession proceedings, the family was kept in the dark

and was unaware of the filing of Kiambu CM's Succession Cause No. 268 of 2013. He asserted that he does not know the 2nd and 3rd Respondents. He pointed out that transfers in favor of the 1st Respondent were made on 23/7/2015 while the administrator had died on 10/7/2015.

6. SIMON MAIMBA MBUGUA (RW1) also adopted his affidavit as his evidence-in-chief. He testified that his grandmother's estate was large and that some of the assets had been distributed in the lifetime of the deceased leaving certain assets for the benefit of the administrator and the witness's father. He claimed that the 2nd Applicant had taken over his (witness) father's piece of land at Muchatha. He justified the non-inclusion of the Applicants in the succession cause on the basis that the said parties had already benefitted from settlements made by the deceased in their favour in her lifetime. Under cross-examination he admitted that he did not have documents to prove the claim that any part of the deceased's estate was retained by the deceased for the sole benefit of the administrator (Moses Njogu Ndirangu) and Eliud Mbugua Njoroge. He further indicated that he was aware of the succession cause in the lower court as he participated by executing certain documents and attended court. He claimed that the administrator transferred the land parcels in dispute to him before his death and thereafter sold it off surrendering the proceeds to the administrator's daughter on behalf of her siblings.

7. The court directed the parties to file their written submissions after the trial. Only the Applicants through their counsel filed written submissions. Counsel submitted that the existence of two different copies of the chief's letter naming different beneficiaries evidences fraud. It was submitted that the beneficiaries of the deceased's estate were denied the opportunity to consent to the appointment of the administrator and the mode of distribution of the deceased's property, that the property was fraudulently transferred to the 1st Respondent to the detriment of the other beneficiaries. Reliance was placed in the case of **Janet Chepkemoi v Joel Kiptanui Arap Koros (2017) eKLR** where it was held that a grant that had been obtained in violation of the Law of Succession Act for failing to disclose all the beneficiaries of the deceased could not be allowed to stand.

8. Counsel stated that the transactions in respect of the deceased's estate by the administrator and the 1st Respondent were illegal the grant issued in the lower court had never been confirmed. That, in any case the 1st Respondent could not pass a good title to the third parties now holding titles to the suit properties. Therefore, the court was urged to cancel the said transfers to the third parties. In that regard, counsel cited the case of **In re Estate of Mutugi Mbutii (deceased) (2018) eKLR**. In conclusion, the court was urged to find that the grant of representation was obtained fraudulently and that subsequent transfers are illegal, and the properties ought to revert to the estate of the deceased for fresh distribution.

9. The court has now considered the evidence adduced by the parties and submissions. The undisputed facts of this case are as follows. **Beatrice Wanjiku Ng'ok alias Beatrice Wanjiku Ngoi alias Wanjiku Ngoi** (hereafter the deceased) died on 1st August 2005 at the age of 80 years, while possessed of four parcels of land, namely, Ngong/Ngong/22986; Ngong/Ngong/27155; Ngong/Ngong/27156 and Ngong/Ngong/25783. She was survived by several children including Moses Njogu Ndirangu, Eliud Mbugua Njoroge (deceased father to the 1st Respondent), Teresiah Njoki Njoroge and Yahya Mgaya Kanyonji. Subsequent to her death, the deceased's family handed over her documents to Moses Njogu Ndirangu for the agreed purpose of instituting a Succession cause.

10. In December 2013 Moses Njogu Ndirangu (hereafter Moses) filed Succession Cause No.268 of 2013 at the Chief Magistrate's Court in Kiambu. The only asset of the estate listed was a land parcel described as Ngong/Ngong/25783 and the beneficiaries identified were Moses, Simon Maimba Mbugua (1st Respondent), Mathew Mbugua Karanja and Simon Maina Mwangi, the latter three who consented to the Petition and were also listed as the persons surviving the deceased in the letter dated 25th November 2013 and purportedly issued by the chief's office, Kiambaa settled area. The letter purported that the deceased was a resident of Kiambaa settled area, and though signed it does not bear the name of the signatory. Upon the Petition being duly gazetted, a grant of letters of administration was issued to Moses on 27th January 2014. To date, the grant has not been confirmed.

11. However, in November 2014 all the four parcels registered in the deceased's name were transferred to Moses and Simon Maimba Mbugua initially. Moses died on 10th July 2015. On 23rd July 2015 the said deceased's four parcels of land were transferred to Simon Maimba Mbugua and he subsequently transferred them to new owners as follows: -

a) LR. No. Ngong/Ngong/22986 - to Peter Mbothu

Kamau on 18/11/15.

b) LR. No. Ngong/Ngong/27155 - to Peter Mbothu Kamau

and Daniel Kamau

Lucas on 18.11.15.

c) LR. No. Ngong/Ngong/27156 - to Peter Mbothu Kamau and Daniel Kamau Lucas on 18.11.15

d) LR. No. Ngong/Ngong/25783 (the sole asset in the Kiambu CM's Succession Cause no. 268 of 2013) -- first to Simon Maimba Mbugua on 23.7.15 and to a third party and back to Simon Maimba on 26.4.16.

12. It would appear that following the death of Moses, Teresiah Njoki Njoroge and Yahya Mgaya Kanyonji (the Applicants) discovered that Moses had filed the succession cause before the CM's court in Kiambu and subsequently further that the deceased's property had since changed hands. Hence the present application.

13. The court must determine whether the Applicants have established the grounds of revocation contained in their application. The key complaints in the Applicants' case are that Moses filed the succession cause by use of a false introduction letter, without their consent, and failed to include all the beneficiaries while presenting names of strangers to the estate as beneficiaries and moreover that the succession cause listed only one asset, concealing other assets that the deceased died possessed of. The Applicants rely on the provisions of Section 76(a) (b) (c) of the Law of Succession Act which state that:

“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;”

14. The Applicants assert that the deceased resided in Ngong and have attached a letter from chief **Paul Kapaito** of Lekurrukki Location in Ngong (annexure **TNNI** to supporting affidavit) to support their position. The letter states that the signatory was well known to the deceased who was a resident of Lekurrukki location, and proceeds to list the deceased's 12 children, both living and deceased. Concerning this letter, the 1st Respondent erroneously asserted that it emanated from the same authority (the chief, Kiambaa settled area) as the one filed in the lower court and that there was an evident dispute on the identities of the beneficiaries.

15. However during his evidence, the 1st Respondent admitted that among the children of the deceased were his father Eliud Mbugua Njoroge (deceased), Teresia Njoki Njoroge, Yahya Mgaya Kanyonji and Moses, and that the former three were not in the list of beneficiaries in the letter allegedly emanating from the chief Kiambaa settled area. And although he claimed that the beneficiaries therein, namely Simon Maina Mwangi and Mathew Mbugua Karanja were children of his two aunts, he could not name the said aunts. Later in cross-examination he was to claim that Mathew Mbugua Karanja was the son of Moses. More surprisingly the 1st Respondent could not state the exact place of residence of the deceased even while asserting that she had resided at Muchatha rather than Ngong. Yahya Mgaya Kanyonji (Yahya) denied that the family ever resided in Kiambu or knowledge of the location of Kiambu settled area where the letter filed in the succession cause in the lower court alleged the deceased to have resided. It is instructive that the petition in that cause included an asset located in Ngong and that other properties listed by the Applicants herein are also located in Ngong.

16. As earlier observed, the chief's letter filed in the lower court petition does not bear the name of the author. It is a photocopied document and it appears from all the foregoing that if genuine, the author of the letter did not know the deceased at all: the letter did not even list the admitted children of the deceased living and deceased. Moreover, the deceased's assets were located in Ngong. It appears to me more believable that the deceased was a resident of Ngong and not of some unknown place in Kiambaa settled area as the letter filed in the lower court purported. Admittedly, Moses did not give a full inventory of the deceased's assets and concealed the existence of other children of the deceased except himself, including instead as beneficiaries, at least two persons whose relationship with the deceased is unclear, and the grandchild being the 1st Respondent. These omissions constitute a violation of Section 51(2) (g) and (h) of the Law of Succession Act and Rules 7(1) (d) and (e) of Probate and Administration Rules.

17. Moreover, although it is common ground that the deceased's family had agreed that Moses was to file a succession cause in respect of the deceased's estate, he was required to consult them at every step but he did not inform his siblings when he petitioned for a grant. Nor did he obtain their consent as required under Rule 26 of the Probate and Administration Rules. Even worse, upon receiving the grant and without applying for its confirmation, the said Moses proceeded to transmit the sole parcel of land declared in the petition, together with other three concealed parcels to himself and the 1st Respondent. Section 55(1) of the Law of Succession Act states that:

“No grant of representation, whether or not limited in its terms, shall confer power to distribute any capital assets, or to make any division of property, unless and until the grant has been confirmed as provided in section 71”.

18. It is a fact that, in view of Moses' demise the grant issued to him has been rendered useless and inoperative and liable for revocation by dint of the provisions of Section 76(e) Law of Succession Act. Similarly, it is evident that at the time the lower court issued the impugned grant, its pecuniary jurisdiction was limited to KShs.100,000/=. Thus it acted in excess of its jurisdiction in view of the value of the estate herein. Beyond that, it is crystal clear Moses had obtained the grant fraudulently by material concealment in respect of the assets and beneficiaries of the deceased's estate and having obtained the grant proceeded to abuse it by transferring all the deceased's assets to himself and the 1st Respondent. And this, without first seeking confirmation of the grant. By this fraudulent process Moses effectively disinherited all his siblings. The proceedings to obtain the grant were clearly defective in substance.

19. Equally, it is evident from the record of proceedings, the Applicants' annexures **“TNN 7”** to the supporting affidavit of the Applicants and annexures **TNN 9A, B, C** and **D** to their supplementary affidavit that the 1st Respondent was part and parcel of the fraud. The latter annexures reveal that Moses initially transferred the four land parcels to himself and then jointly to himself and the 1st Respondent on the same day i.e. 14.8.14 and that subsequent to Moses' , death the 1st Respondent transferred the four parcels first to himself, and then to 3rd parties, with the exception of parcel No.25783 which was re-transferred by the third parties to the 1st Respondent. The latter transactions were carried out while an application filed by the Applicants was going on in the lower court.

20. To hear the 1st Respondent's attempted rationalization of this entire fraudulent process was akin to beholding impunity personified. According to him, the other beneficiaries were excluded because the property of the estate was due to his father and Moses the rest of the estate allegedly having been distributed *inter vivos* by the deceased. In cross-examination he could not tender proof of the assertion. He

stated that he attended court sessions in respect of the petition in the lower court and that after the grant was issued the land was registered in his and Moses' name and thereafter Moses instructed him to transfer the land to himself, which he did after Moses' death. He continued to state during cross-examination that:

“He (Moses) told me to transfer (the land) to his daughter and other children. We agreed to sell the land. I gave her the proceeds. Today the land has new owners....”

21. Earlier, the 1st Respondent had deposed in his affidavit in opposing the motion that:

“12. THAT I wish to state that my biological father was Eliud Mbugua (son of the deceased herein) and as such, I was entitled to the estate of the deceased and it happened that one day in or around May 2015, Moses Njogu Ndirangu asked for my identity card and P.I.N certificate in order to register me in a parcel of land emanating from the deceased estate which I complied.

13. THAT shortly before he died, he (Moses) advised me which advise I verily believed to be true, that my titles were at Ngong land registry and I should go for them since he was frail.

14. THAT I indeed went for the titles after the death of my said uncle and was issued with the same as directed by him.” (sic)

22. Although two other beneficiaries had been listed in the petition in the lower court, none of them appear to have benefitted from this fraudulent scheme. Evidently, the 1st Respondent colluded with Moses to ensure that only they benefitted from the estate of the deceased and indeed all the transfers to 3rd parties of the suit property were effected by the 1st Respondent after the death of Moses.

23. I think I have said enough to demonstrate that the grant herein is ripe for revocation on the grounds contained in Section 76 (a), (b) and (c) of the Law of Succession Act and I so find. The grant is hereby revoked. And having found that the entire process by which Moses and later the 1st Respondent obtained title to the suit property is riddled with brazen fraud, it is inescapable that neither Moses nor the 1st Respondent had a good title to pass to any third party. Neither Moses nor the 1st Respondent had legal capacity to transfer the suit properties to themselves or to 3rd parties. It therefore rings hollow for the 1st Respondent, a key architect in the fraud herein, to assert that the land now belongs to “new owners”. The sale and transfer of the suit property to third parties and to the 1st Respondent are null and void and of no effect.

24. In the court's considered view, given the circumstances of this case, the Applicants and other beneficiaries of the deceased's estate will be handed a pyrrhic victory and justice defeated if the court stops at the revocation of the grant. Therefore, invoking the provisions of Section 49 of the Law of Succession Act and Rule 73 of the Probate and Administration Rules, this court declares the transactions of sale and transfer of assets of the deceased's estate to third parties and to the 1st Respondent are null and void. For the avoidance of doubt an order hereby issues for the cancellation of the resultant titles in the names of third parties and the 1st Respondent. The court further directs the Land Registrar Ngong/Kajiado to reinstate proprietorship in respect of all the four parcels of land the subject of this ruling, namely, LR. Nos. Ngong/Ngong/22986; Ngong/Ngong/27155; Ngong/Ngong/27156; and Ngong/Ngong/25783 or any subsequent combination/consolidation of some or all of them, back into the name of the deceased herein. All further dealings in the suit property are hereby prohibited pending further orders of this court.

25. A fresh grant in this matter will issue in the joint names of the two Applicants herein. There is liberty to apply for confirmation of grant before the expiry of the statutory period of six months. Such application must disclose all the children of the deceased, and if deceased their children who have survived them. The 1st Respondent will bear all the costs occasioned by the application.

SIGNED AND DELIVERED ELECTRONICALLY THIS 25TH DAY OF SEPTEMBER 2020.

C. MEOLI

JUDGE