



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT EMBU

MISC. SUCCESSION CAUSE NO. 29 OF 2001

IN THE MATTER OF THE ESTATE OF NGARI M'TETU (DECEASED)

JEMIMAH WAWIRA.....1ST APPLICANT

RUTH MUKAMI.....2ND APPLICANT

VERSUS

DAVID NJERU NGARI (sued as the Legal Representative

of the Estate of Jedida Ruguru Ngari).....RESPONDENT

RULING

A. Introduction

1. When the Application dated 20/06/2018 came up for hearing on 22/09/2020, the counsel for the Applicants made an application to the effect that the instant file be separated from the file in SPM's Succession Cause 117 of 1993 and so as to enable the Chief Magistrate court to hear and determine the application for revocation of grant issued and confirmed by that court.

2. This application was opposed by the counsel for the Respondent on the grounds that the files could not be separated since LR. Ngandori/Kiriari/5574 was one involved in succession Cause and thus putting together of the files was to facilitate the hearing of the case.

B. Submissions by the parties

3. The court gave directions that the counsel do file submissions on the status of the files and which directions the both parties complied with.

4. On their part the applicants submitted to the effect that their application for revocation of the grant made in PMC's Succession No. 117 of 1993 and whose estate value was not worth more than Kshs. 20,000,000/= and thus the lower court which issued the grant had the jurisdiction to entertain the matter. As thus it was in the interest of justice that the two files be separated and that the SPM Succession 117 of 1993 be transferred to the lower court for hearing of the application for revocation. Reliance was made on **In re Estate of Chege Kai (Deceased) [2020] eKLR, Turfena Anyango Owour & Another –vs- Mary Akinyi Dengo (2018) eKLR, re Estate of Mutugi Mbutii (Deceased) (2018) eKLR** and **Spine Bank Limited –vs- Emerging Investments Limited [2019] eKLR**.

5. The Respondent submitted to the effect that the grant was properly obtained and confirmed and thus the application to revoke the grant and to transfer the file to the lower court ought to be set aside. It was further submitted that the application for revocation is res judicata as the same had been determined before. Reliance was made on the case of **Uhuru Highway Development Limited –vs- Central Bank of Kenya & 2 others [1996] eKLR**. Further it was submitted that the transfer of the lower court was procedurally defective and bad in law as the said court does not have jurisdiction to revoke grant and that the applicants did not have the capacity to approach the court as they were not interested parties.

C. Issues for determination

6. From the above submissions, it is my view that the issues for determination are: -

i. Whether this file Misc. Succession Cause No. 29 of 2001 should be separated with Embu CM Succession Cause No. 117 of 1993; and

ii. Embu PMC's Succession Cause No. 117 of 1993 be transmitted to the lower court for disposal.

D. Analysis of the law and determination

7. In opposing the application for transfer of the file to the lower court, the Respondent submitted that the files could not be separated since the LR. No. Ngandori/ Kiriari/ 5574 is one of the sub-division parcels arising from transmission of LR. Ngandori/Kiriari/1591 in Succession Cause No. 189 of 2009. The record shows that when the grant was confirmed in Embu PM Succession Cause No. 117 of 1993, one Prisca Marigu Ngari filed Misc. Application No. 29 of 2001 in this court seeking for revocation of grant. Eventually Prisca succeeded and the grant in favour of Jedida Ruguru Ngari was revoked. The land that had been bequeathed to Jedida was registered in the names of Jedida and Prisca. The respondent David Njeru later inherited his mother's half share in Succession Cause No. 189 of 2009. This is Ngandori/Kiriari/5575 Prisca retained her half share LR. No. 5574.

8. Myriads of other applications were filed in this file Misc. No. 29 of 2001 all of which have already been heard and determined. The only application pending for hearing and determination is the amended application for revocation of grant amended on 20/06/2018. There is evidence from the parties that there was a civil case before the magistrate' court between the respondent David Njeru Ngari and his brother Jonathan who is one of the applicants in the application dated Relating to LR. Ngandori/Kiriari/5575 which is not related to the succession files herein.

9. The law grants a magistrate power to revoke a grant under Sections 48 and 76 of the Act and Rule 44 of the Probate and Administration Rules. the issue of a magistrate's jurisdiction in revoking a grant issued by him or her is not in question.

10. I have perused the record and noted that the High Court has extensively dealt with this matter. Firstly, several applications by the parties have been determined and very far-reaching orders made.

11. There is evidence that R. Ngandori/Kiriari/5575 was sib-divided into five (5) portions three of which are registered in the name of David Njeru Ngari and two others in the names of 3rd parties.

12. The applicants in the Amended application are Jemimah Wawira and Ruth Mukami against the respondent David Ngari sued in his capacity as the legal representative of his mother Jedida Ruguru Ngari's estate.

13. On further perusal of th record, I find that SPM Succession Cause No. 117 of 1993 is not joined to this HC Misc. Application No. 29 of 2001. The parties must have been under a mistaken belief that the files were joined together. The file that has been found in the registry and which is relevant herein is HC Succession Cause No. 189 of 2009 in the estate of Jedida Ruguru Ngari the late mother of the respondent David Njeru Ngari.

14. Search of Succession Cause No. 117 of 1993 is still on going in the registry. It is my considered view that once this file is traced, it ought to be joined with this HC Misc. No. 29 of 2001 and with any other relevant file.

15. Even assuming that SPM Succession Cause No. 117 of 1993 was joined herein, it would be against the interests of justice to separate it from this one given that this court through more than four (4) judges have made several orders which the magistrate's court has no power to review, if need arises.

16. In my considered view, it is in the interests of justice that the High Court continues dealing with these matters in the said files until the matters are fully heard and determined.

17. I hereby decline to allow separation of this file No. 29 of 2001 and further order as follows: -

a) That the registry do search for SPM Succession No. 117 of 1993 and join it with this file for purposes of hearing and determining the pending applications.

b) That HC Succession Cause No. 189 of 2009 which is available in the registry be joined to this file as well.

18. It is hereby so ordered.

DELIVERED, DATED and SIGNED at EMBU this 26th day of October, 2020.

F. MUCHEMI

JUDGE

Ruling delivered through video link in the presence of Ms. Mutuku for the Applicants