



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

SUCCESSION CAUSE NO 351 OF 2002

IN THE MATTER OF THE ESTATE OF M'TUARUGOJI M'KIRIMUNYA

DECEASED

MARTHA NAITORE M'MURITHI.....APPLICANT

-versus-

JEREMIAH M'NJOGU.....RESPONDENT/ADMINISTRATOR

GELVERSIO METETHIA.....1ST INTERESTED PARTY

PMCA CHURCH2ND INTERESTED PARTY

RULING

1. Before me is an application dated 10/7/2018 which is seeking revocation of grant issued to Jeremiah Njogu on 14/10/2009 and rectified on 3/11/2010. The major grounds for seeking revocation of grant as borne out in the application and affidavit in support are:

1. That the grant was obtained fraudulently by making false statement pertaining to the existence of Parcel Number NTIMA/NTAKIRA/685 which parcel had long been subdivided through court decree in Meru CMCC No. 73 of 1987 (also HCCA NO. 21 of 1990) into parcels No. NTIMA/NTAKIRA/2488, and 2489. The subdivision was done during the lifetime of the deceased. Parcel No. 2488 went to Tirindi Janet while the rest of the land remained in Parcel No. 2489 in the name of the deceased.

2. That Jeremiah has always laid claim upon the portion of Janet Tirindi (now deceased) on the basis that she had life interest on the land upon whose determination the portion resulted to him. That Jeremiah has filed numerous cases to realize this his claim. To achieve his desires, he has embarked on amalgamation of parcel No. 2488 and 2489 into its original Parcel Number 685. This approach of Jeremiah had denied the applicant and her family their rightful share in the estate. Those who are not affected have already settled except her family.

3. That despite notice to Jeremiah, he has failed to administer the estate diligently; instead he has dragged the estate into his own path to satisfy his desires.

4. Revocation is the only way out of the stall as a new administrator will be appointed to administer the estate.

2. Jeremiah Njogu opposed the application and filed a Replying affidavit and submissions. In effect his arguments are:

a. That the applicant is a mere beneficiary of her late husband and cannot challenge what her husband was party to; the consent in the court of Appeal. Her application for substitution was even dismissed by court. He was of the view that his application be heard together with his dated 26/3/2015.

b. That she is trying to use her application to change matters which were settled in the court of appeal and to circumvent execution of Court of Appeal orders.

c. That the court declared itself functus officio on matters that had been settled by the Court of Appeal.

d. He therefore seeks the application to be dismissed.

ANALYSIS AND DETERMINATION

3. According to my order of 15th July, 2020 I will determine only the application dated 10/7/2018 which is for revocation of grant. I will also restrict myself to only material or arguments which are relevant to the application under considerations for good reasons. First, because there is an appeal pending against my orders herein. Second, because there are Court of Appeal orders in different cases which are yet to be executed. And third, because I do not wish to introduce any further muddle in the proceedings. I will say just enough.

LOCUS

4. It has been argued by Jeremiah Njogu that the applicant has no right to apply for she is a mere beneficiary of her deceased husband. He urged that her application for substitution had even been denied by the court. Despite these arguments, the law provides that an application for revocation of grant, whether the grant is confirmed or not, can be made at any time by any interested person. See section 76 of the Law of Succession Act. The applicant is a beneficiary through the principles of representation of her late husband who was a son of the deceased. She is, therefore, an interested person in the estate of the deceased. Accordingly, she has the requisite locus to apply. I should also add here that in this case, nothing in law or fact that prevents such an application from being made any time. In fact, the Court of Appeal orders do not preclude or bar application for revocation of grant from being made. Notably, the grant constitutes complete order of court which is governed by and dealt with under the law of Succession Act. Thus, the argument by Njogu that the application runs counter to the Court of Appeal orders is totally indefensible.

REVOCAION

5. The grounds of revocation cited by the applicant are mainly that the grant was obtained through false statement on a non-existent Parcel of land i.e. NTIMA/NTAKIRA/685 as this parcel of land was subdivided during the lifetime of the deceased into parcels No. 2488 and 2489. The former went to Janet Tirindi pursuant to a court order and the latter remained in the name of the deceased. The applicant argued that Jeremiah is so obsessed with owning parcel number 2488 to the extent that he has filed so many cases towards satisfaction of that desire. Now, she says, he has injected the poison around the said plot into these proceedings, thereby, causing confusion and delay in the implementation of the grant. She accused him of causing rectification of the grant to introduce parcel No. 685 into these proceedings.

6. Jeremiah argues that this application is being used to circumvent what the Court of Appeal has already settled. He also seem to suggest that I declared myself *functus officio* in respect of this cause. To former argument I say; the Court of Appeal did not settle probate and administration issues in respect of the deceased. to the latter argument I say once again; the law allows revocation of grant to be applied for by any interested person at any time whether a grant has been confirmed or not. Notably, the court on its own motion may also order revocation of the grant.

7. I have perused the record and I do note that parcel No. NTIMA/NTAKIRA/685 was not listed as one of the assets of the deceased. it was introduced much later through rectification of grant. I am aware of the claims by Jeremiah Njogu on NTIMA/NTAKIRA/685 and that he has challenged the subdivision. Except, it is now clear that the wrangles around this issues- as evidenced by the many legal battles on that parcel of land- seem to have been injected into these proceedings, and as a result, have caused delay and confusion in these proceedings. An administrator ought to act diligently and complete administration of the estate within reasonable period. Doubtless, administration of this estate has taken long to complete; it is yet to complete and closure is not even in sight. I do not think that introduction of NTIMA/NTAKIRA/685 into these proceedings before the status of that property had been ascertained was a diligent act by the administrator; the act only helps in obscuring the estate property as well as impeding completion of administration of the estate. This runs contrary to his duties as an administrator of the estate. It bears repeating that, the delay herein portrays not a diligent administrator. Accordingly, I should think the best interest of all beneficiaries lies in revocation of the grant. This way the estate property will be determined and due distribution be done by the court to the beneficiaries. Accordingly, I revoke the grant issued to Jeremiah Njogu with all subsequent rectification thereto. The Judge presiding over these proceedings will examine the suitable person or persons including Jeremiah Njogu to be appointed as administrators of the estate. It is so ordered.

Dated, signed and delivered at Narok through Teams Application this 23rd day of November, 2020

F. GIKONYO

JUDGE