



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

FAMILY DIVISION

SUCCESSION CAUSE NO. 224 OF 2006

IN THE MATTER OF THE ESTATE OF NDIINGURI KARUGIA (DECEASED)

AND

IN THE MATTER OF 99 PLOTS REGISTERED AS

LR. NO. NAIROBI 28641/4 UPTO 28641/103 BEING SUBDIVISION

CURVED OUT OF LR. NO. 7340/59 MAVOKO

BETWEEN

1. SIMON NGIGI KAMAU
2. SAMUEL MACHIRA MUGAI
3. HENRY NJOROGE NJONJO
4. LUKE MUCHIRA NYAGA
5. ROBERT KUNGU MUIRURI
6. JANE GATHONI WANGETHA
7. FREDRICK GICHUHI NJENGA
8. JOSEPH KINUTHIA
9. ELILEEN W. KINUTHIA
10. NELSON MURITU NJENGA
11. KENNETH NJENGA MUNGAI
12. DAVID NGANGA NJENGA
13. SARAH WANJIKU KAMAU.....APPLICANTS

-VERSUS-

HANNAH GATHONI GICHURI (Sued as the Legal

Administrator of the estate of

NDINGURI KARUGIA (Deceased).....RESPONDENT

RULING

Before court for determination is a Summons brought under Certificate of urgency filed on the 14th of July, 2017, brought under **Section 93** of the Law of **Succession Act Cap 160 and Rule 16, 49, 59(1), 60 and 73** of the Probate and Administration Rules ; the applicant , David Nganga sought the following orders;

- a) **That all applicants herein be joined in the Succession cause as interested parties.**
- b) **That the Honorable court to review its ruling /order of the 6th of February 2017 to the following extent:-**
 - i) **That the sale of 99 plots namely L.R No. 28641/4 up to L.R No.28641/103(both inclusive) by Hannah Gathoni Gichuri to the applicants herein be declared legal and transfer in favor of the Applicants do proceed to completion.**
 - ii) **That the current Legal Administrator co-operates and offers assistance required by the Applicants to the effect the transfers of the aforesaid 99 plots in favor of the Applicants.**

The Applicant based his application on the following grounds;

- a) **The court in its ruling of 6th February 2017 did not make any determination on the applicants' application of 31st January 2017.**
- b) **The applicants have been greatly aggrieved and are in limbo with regards to the status of their purchases and transfers of the aforesaid 99 plots.**
- c) **That the applicants are *bonafide* purchasers of the 99 plots notwithstanding the revocation of the grant issued to Hannah Gathoni Gichuri.**

The Applicants have sought to be joined to this suit as interested parties on the basis that the defunct administrator Hannah Gathoni Gichuri daughter in law of the deceased, sold 99 Plots that comprise the estate of the deceased from **L.R.No. 28641/4- 28641/103**.

The Applicants averred that reading of the Ruling delivered on 6th February 2017 clearly shows that the Court did not consider, make reference to or make any determination on the aforesaid application and therefore the Applicants believe that there is an error apparent on the face of the record.

The Applicants claim that due to the aforesaid orders contained in the Ruling, the Applicants are unable to proceed and complete the registration of the transfer of title and properties.

The Respondent David Nganga filed grounds of objection and Replying Affidavit to the application on 15th September 2017. He contended that the sale of land was by his sister -in- law on the basis of a grant obtained fraudulently and was revoked by the Ruling of this Court of 6th February 2017. The Respondent filed caution on the suit properties that comprise of deceased's estate in the Ministry of Lands and lodged complaint to the National Land Commission.

In **ELC 559 of 2014**, where the Respondent was joined by the Plaintiffs stated that the purported sale agreements were drawn on diverse dates between 2010-2012 whilst there were valid Court orders dealing in the suit properties. The Respondent annexed Court orders by Hon Justice Lenaola of 2nd September 2011 and by L. J.Angawa of 20th September 2011. Therefore, the application for review should not be granted as the sale was restraining any disposition of the suit property until the matter is heard and determined contrary to court orders.

DETERMINATION

Review of judgment is grounded on **Order 45 Civil Procedure Rules 2010** on the basis of discovery of new and important matter or evidence after which the exercise of due diligence, was not within his knowledge or could not be produced by the Applicant at the time when the decree was passed or on account of some mistake or error apparent on the record or for any sufficient reason.

In the instant case; the applicants alleged that they brought to the attention of this Court at/during the hearing of the application for revocation of grant filed by David Nganga Ndinguri; son of the deceased their claim to the land that is part of deceased's estate and established their proprietary interest.

This Court's jurisdiction is/was to administer and/or distribute the assets that comprise of the deceased's estate by conferring beneficial interest to the beneficiaries and/or dependents of the deceased. The Applicants claims are subject of proprietary interests of parcels of land that consist of the deceased's estate bought from and sold by Hannah Gathoni Gichuri widow of Herman Ndinguri, late son of the deceased's herein. The Court could not/cannot determine proprietary interests in the Family Court forum unless and until agreed to by beneficiaries of deceased's estate. Such claims to the deceased's estate ought and should be ventilated and canvassed in the Environment and Land Court more specifically in **ELC 559 of 2014**.

The Court in its judgment delivered on 6th February 2017 stated in relation to the instant claim;

“The grant and confirmed grant of 17th August 2006 were obtained fraudulently; the Respondent did not disclose material facts as regards the family of the deceased and properties that comprise of the deceased’s estate. The Respondent has since confirmation of grant sold Mavoko 7340/59 which she transferred to her name. The Respondent also sold Githunguri/Kimathi/1762 which she transferred to her name.”

The Court acknowledged the information of purported sale of deceased’s estate by the Respondent Hannah Gathoni Gichuri but did not/could not go further and determine the claim as it was not admitted by beneficiaries; the Respondent did not file any documents and/or attend Court or contest the claim of obtaining the grant fraudulently due to material non-disclosure of deceased’s family. The judgment dealt with revocation of grant itself. There is no legal basis of review of the said judgment as the issue sought to be determined relates to sale of land and not inheritance of the same to beneficiaries. There is also in existence a related matter in ELC Court which is the appropriate forum to hear and determine ownership of land disputes.

Secondly, This Court on 29th May 2018 appointed the following beneficiaries as administrators of deceased’s estate under **Section 66 of Law of Succession Act Cap 160;**

- 1. Charles Boro**
- 2. Grace Wachu**
- 3. Esther Wambui Ndinguri**

The administrators have statutory duties under **Section 79 -83 of Law of Succession Act Cap 160** that include executing transfer documents of parcels of land that comprise of deceased’s estate after confirmation of grant.

Thirdly, since the revocation of grant to Hannah Gathoni Gichuri; the new grant has not been issued to the new administrators so as to enable them carry out their statutory duty and be sued or joined in proceedings of **ELC 559 of 2014**. The grant has not been confirmed to facilitate the distribution of the estate wherein the Purchasers may protest that their respective portions are not available for distribution as they are subject of sale by the defunct administrator Hannah Gathoni Gichuri and the dispute is not determined.

Fourthly, the seller Hannah Gathoni Gichuri purported to sell land with the grant she obtained fraudulently. This Court had a cursory glance at the attached copies of agreements for sale and the Respondent Hannah Gathoni Gichuri is named as personal representative/administrator of the deceased’s estate and she held herself out as conferring proper title to the *bona fide* purchasers.

The law protects a *bona fide* purchasers for value without notice of defective title such as the Intended Interested Parties, who in this regard are specifically protected by **Section 93 of Law of Succession Act**.

In **BOB NJOROGE NGARAMA VS MARY WANJIRU NGARAMA & ANOTHER, [2014]eKLR; IN RE ESTATE OF JOSIAH MANTU(2017)eKLR, IN RE MATTER OF THE ESTATE OF NYAMURA NJOGE THUO ALIAS NYAMURA NJONGE THUO (DCD) 2204 OF 2011** the rights of *bona fide* purchasers for value were protected.

The Respondent Hannah Gathoni Gichuri distributed property of the deceased after the confirmation of Grant which was obtained by false/misleading information and therefore went ahead to sell part of the property of the deceased to the applicants herein. The Respondent failed to disclose other beneficiaries of the estate and posed as sole administrator and beneficiary until the grant was revoked. The purchasers would not have detected the anomaly even if they undertook due diligence. They bought for value and did not have notice of defective title.

There are copies of sale agreements filed/annexed to the application that suggest sale of land by defunct administrator to the Purchasers/Applicants without notice of defective title. They can/may/shall be protected by **Section 93 (1) LSA** if they prove their claim s in **ELC 559 of 2014**.

DISPOSITION

- 1. The prayer in the Summons dated 14th July, 2017 seeking to enjoin the applicants in this suit as interested parties is hereby dismissed.**
- 2. The *status quo* shall be maintained with respect to the properties that comprise of the Estate of Ndinguri Karugia pending issuance of new grant pursuant to Court orders of 29th May 2018 and hereby amended as follows;**
 - 1. David Nganga Ndinguri (2nd House)**
 - 2. Grace Wachu (1st House)**
 - 3. Esther Wambui Ndinguri (2nd widow of deceased)**
 - 4. Beth Njeri (1st House)**

Appointed as administrators of the deceased’s estate under Section 66 of LSA

3. The administrators shall consult and agree with all beneficiaries on confirmation of grant before any distribution of the estate.
4. Any aggrieved party; beneficiary, dependent or interested party may object to the summons for confirmation of grant and be heard and determined by the Court.
5. The judgment of the court of 6th February, 2017 remains as is and is not reviewed.
6. The order of the Court of 9th June, 2016 in ELC NO. 559 of 2014 remains as is.
7. The said newly appointed administrators may also execute documents of transfer the relevant properties to the Applicants/ Purchasers who establish their claim.
8. The Purchasers' interests/claims shall be protected under Section 93(1) of LSA until they canvass and ventilate their proprietary right(s) in ELC court.
9. The defunct administrator Hannah Gathoni Gichuri whose grant and confirmed grant were revoked by the Court's judgment of 6th February 2017 shall account to the Court and all beneficiaries on proceeds of sales undertaken with regard to properties of the deceased's estate; the amounts expended and what amount was availed to beneficiaries.
10. In default of the above; in distribution of deceased's estate; the Court shall take into account the portions of land of deceased's estate sold be defunct administrator as part of her beneficial interest and entitled to further beneficial interest.
11. Any aggrieved party may apply or exercise right of appeal.
12. Costs in the cause.

DELIVERED SIGNED & DATED IN OPEN COURT ON 29TH JANUARY 2019

M.W.MUIGAI

JUDGE

IN THE PRESENCE OF;

MR.KAMAU H/B MR WAHOME FOR APPLICANTS

MR.NGEREZA FOR RESPONDENTS

MS JASMINE COURT CLERK