



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KIAMBU

SUCCESSION CAUSE NO. 101 OF 2016

IN THE ESTATE OF EDWIN NJEHIA THIONGO alias NJEHIA THIONG'O (DECEASED)

1. MARY WAMBUI NJENGA

2. NYAKAHUMBU NJENGA.....APPLICANTS

VERSUS

JOSPHAT NGUGI NJENGA

GEOFFREY GITAU THIONG'O.....RESPONDENTS

R U L I N G

1. Before me is the Summons filed on 24th November, 2016, seeking revocation or annulment of grant and brought by **Mary Wambui Njenga** and **Nyakahumbu Njenga** in regard to the estate of the late **Edwin Njehia Thiong'o** (deceased). On grounds *inter alia* that the certificate of confirmation of grant was obtained fraudulently by concealment of the fact that the Applicants were also part of the beneficiaries of the estate of the deceased. The Respondents are some of the beneficiaries under the impugned grant.

2. On 7th March, 2017, the Applicants filed an application under certificate of urgency stating that the Respondents had commenced the subdivision the suit property before the application for revocation could be heard and determined with the probability that the property was at risk of alienation. The court disposed of the said application by an order that the status quo be maintained.

3. In opposition to the Applicants' summons for revocation of grant, the Respondents filed their grounds on 21st August, 2017. Subsequently, Counsel for the Respondents proposed that the Grounds of Opposition be treated and argued as a preliminary objection, as they raise points of law. The court directed that oral submissions on the preliminary objection be made.

4. Mr. Njuguna, counsel for the Respondents, submitted that the Applicants are strangers to this matter as no letters of administration had been granted to them in connection with the deceased son of Edwin Njehia Thiong'o. It was submitted that the Applicants lack *locus standi*; that the Applicants filed their response to the grounds of opposition on the hearing day despite having been granted enough time to file the same, a move that was said to be an attempt to defeat justice. In conclusion, the Respondents reiterated that the Applicants are strangers to this cause and urged the court to strike out their supplementary affidavit filed on 24/10/2018.

5. In response, Miss Kuria, counsel for the Applicants pleaded with the court to admit their said affidavit albeit filed late. She submitted that one of the Applicants suffers from depression, while the other is ailing, thus causing the delay in filing the affidavit. She submitted that the applicants were ordered to regularize their participation in the cause and in furtherance thereto, they have obtained letters of administration *ad litem*. She asserted that **Mary Wambui** is the wife to **Mathew Njenga** a son to the deceased, who died in 1985, and that the confirmation of grant in this case was made in 2011 whereas the Applicants only learnt of the process recently.

6. The court has considered the arguments made in support of and in opposition to the Respondents' preliminary objection. In the celebrated case of **Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd (1969) EA** the Court of Appeal for Eastern Africa defined a preliminary objection as one that:

“[C]onsists of a point of law which has been pleaded, or which arises by clear implication out of pleadings and which if argued as a preliminary point may dispose of the suit.”

Per the judgment **Sir Charles Newbold J:**

“It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact had to be ascertained or if what is sought is the exercise of judicial discretion.”

7. The Applicants herein purport to bring the summons for revocation on the basis that they are the wife and daughter respectively, of one **Mathew Njenga**, an alleged son of **Edwin Njehia Thiongo alias Njehia Thiong’o**. The summons additionally sought an inhibition, restrictions and cancellation of transmission in respect of three properties, namely **Karai/Gikambura/954, Karai/Gitambura/T.138 and Karai/Gikambura/ T.139**.

8. On being confronted with the grounds of objection filed on 21st August 2017 and subsequently treated as a preliminary objection, the Applicants had filed a further affidavit on 27th September 2017. Therein they reiterated their status in relation to the deceased herein and the merits of their summons. On the morning of the hearing of the preliminary objection the Applicants filed a Supplementary affidavit in which it was deposed *inter alia* that:

“...it is averred that we have no *locus standi* to present, lodge summons for revocation as we are not dependants under section 26 of the Law of Succession, however we have since obtained letters ad litem to regularize our participation in this cause.”

9. Indeed a copy of a Limited Grant *ad litem*, dated 6th September 2018 is attached to the affidavit as annexure “**MWHN1**”. By this, the Applicants concede that at the time of filing the summons for revocation on 24th November 2016, they had not been clothed with the legal status empowering their actions.

10. As the Court of Appeal stated in **Rajesh Pranjivan Chudasama v Saulesh Pranjivan Chudasama [2014] e KLR**:

“A litigant is clothed with *locus standi* upon obtaining a limited or a full grant of letters of administration in cases of intestate succession”

11. The Applicants commenced the present litigation before obtaining a limited or full grant in respect of the estate of **Mathew Njenga**. The present action is a nullity and a non-starter. See **Wambui Otieno v Joash Ochieng Ougo [1982 – 88] IKAR 1049**. An action brought before the litigant is clothed with *locus standi* is bad. Such an action is incurably bad and automatically null and void as stated by **Lord Denning** in **Macfoy v United Africa Ltd [1961]3 ALL ER 1169**.

12. In the circumstances, the Applicant’s procurement of a grant *ad litem* almost 2 years since commencing the action is of no consequence. The said grant cannot cure the defect in their summons. This court therefore upholds the preliminary objection and orders that the summons for revocation of grant filed on 24th November 2016 be struck out with costs.

DELIVERED AND SIGNED AT KIAMBU THIS 21ST DAY OF FEBRUARY 2019

C. MEOLI

JUDGE

In the Presence of:-

Mr. Olaka Olaka holding for Mr. Njuguna for Respondents

Applicants – No Appearance