



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT ELDORET

MISC. SUCC CASE NO. 18 OF 2018

IN THE MATTER OF THE ESTATE OF THE LATE PAUL DANIEL CHEGE MWANGI (DECEASED)

GRACE KAKAI.....APPLICANT

VERSUS

LUCY WANGUI.....RESPONDENT

RULING

The application filed on 21st May 2018 seeks the following orders:-

- (a) That the grant of letters of administration issued to the respondent herein on 17th June, 2016 and confirmed on 20th December 2017 over the estate of the late Daniel Chege Murangi be revoked.
- (b) That the process of perfecting the confirmed grant in terms of proposed sub division and transfer be stayed pending the hearing and determination of the application.

The application is founded on the following grounds:-

- (a) The proceedings to obtain the grant were defective in substance.
- (b) The parcel of land No. Moi's Bridge Block 1/Mukunga/45 owned by the deceased measures 6.27 acres, and not 7 $\frac{3}{4}$ acres proposed for distribution in the confirmed grant, which makes it impractical.

The applicant contends that she got married to the deceased (*Paul Daniel Chege Mwangi*) in 1984 and dowry was duly paid to her parents. They settled in Mwenga Farm No. 45 and were blessed with 4 issues, but one later passed on.

The following three are:-

- (1) Esther Njoki
- (2) Samuel Chege
- (3) Lucy Wangoi

Prior to her marriage the deceased had another wife namely Margaret Gathoni Chege and they had six issues namely:-

- (1) Lucy Wangoi
- (2) Annah Nyambura
- (3) Geoffrey Mwangi
- (4) Beatrice Waithira
- (5) Tabitha Wambui

(6) Joseph Kihiko

However, this 1st wife separated with the deceased in 1988 which prompted her to move out with her children and never got back upto the time the deceased died in 1997. She also later died and was buried in land parcel No. 45. Her daughter *Lucy Wangui* applied for letters of administration without involving any member of the 2nd family. The respondent therefore concealed her existence as a 2nd wife, and of her children. She did not access the gazette notices as she is illiterate. She submitted that she ranked higher than the respondent in the order of priority for filing for a grant. She relied on the case of *Re-Estate of Chepkoskei Chepkilim (deceased) Kitale HCSC 173/2017*, which is on the revocation of grant based on false claims.

The Respondent argues that a certificate of confirmation cannot be revoked vide a Miscellaneous Cause. It need be filed on the main succession cause for revocation to occur. Further, she contends that the applicant was not married to the deceased and simply encroached on the property and began intermeddling with the Estate.

The issues for determination in this application are whether: -

- (1) This court has jurisdiction to revoke a grant.
- (2) There was non-disclosure of material facts by the respondent.

On the first issue, the finding in the case of *Josephine Wambui Wanyoike –vs- Margaret Wanjira Kamau and another [2013] EKLK* of which finding is based on provisions of Section 76 of the Succession Act, is relevant.

The court found that:-

“If a magistrate had power to set aside Grants that are already confirmed, that would be tantamount to usurping the powers of the High Court exercised under Section 76 of the Law of Succession Act, and fly in the face of Section 48 (1) of the same Act which defines the jurisdiction of a Magistrate in respect of Succession matters.

It is our view that once a magistrate confirms a Grant of letters of Administration; he/she is divested of jurisdiction to reopen that matter. The only recourse a dissatisfied party has is to move the High Court for orders of revocation of the Grant.”

The upshot of the foregoing finding is that the applicant is rightly before this court. On whether the court can revoke a grant on a Miscellaneous Application, the holding in the case of the Estate of *Isaac Kamau Ndoge (deceased) [2014] eKLR* is relevant, in which it was held that:-

“The cause before me is miscellaneous. It was commenced for only one purpose, the revocation of the grant issued by the Thika court. There was no other purpose. Once that purpose was accomplished on 7th November 2011 the cause was exhausted. No other process ought to have been initiated in this case thereafter.”

The finding shows application for revocation of a grant can be initiated by way of Miscellaneous application. The applicant herein was therefore right in doing so.

Under Section 76 of the *Laws of Succession Act*, a confirmed grant of representation can be revoked if it was obtained fraudulently by making of a false statement or by the concealment from the court of something material to the case. The applicant has availed reliable evidence to the effect that she was married to the deceased. She attested so in her affidavit, which is corroborated by the affidavit of *Esther Wanjiku Mwangi*, a sister to the deceased (*Paul Daniel Chege Mwangi*). There is also an attached Chief’s letter which confirms the said claim. The respondent herein was aware of the fact and did not disclose it while applying for the letters of administration, and all the way upto the confirmation of the grant. She is therefore guilty of non-disclosure or concealment of material facts. On the ground the application has merit and is granted. The grant confirmed on 20th December, 2017 stands revoked.

S. M GITHINJI

JUDGE

DATED, SIGNED and DELIVERED at ELDORET this 28th Day of March, 2019.

In the absence of:-

Applicant

Respondent

And in the presence Mr. Mwelem- Court clerk