



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

HIGH COURT SUCCESSION CAUSE NO.455 OF 2009

IN THE MATTER OF ESTATE OF TRUPHENA WAMBUI MUNYORI (DECEASED)

MICHAEL KIRUHI MUNYORI.....APPLICANT

BETWEEN

JOSHUA MWANIKI MUNYORI.....1ST RESPONDENT

PETER KIHARA MUNYORI.....2ND RESPONDENT

RULING

The application before me is the summons for annulment of grant dated 23rd October 2018 brought by Michael Kiruhi Munyori and supported by his affidavit sworn on the same date.

It seeks order under s.76 (b) and (c) of the Laws of Succession Act as follows: -

- 1. That the grant of Letters of Administration to JOSHUA MWANIKI MUNYORI and PETER KIHARA MUNYORI on the 8th February 2008 be revoked/annulled and NAIROBI HIGH COURT SUCCESSION CAUSE NO.1509 OF 2001 be implemented.*
- 2. That the Land Registrar, Nyeribe ordered to cancel the registration by the respondents in L.R NO.TETU/ICHAGACHIRU/379 and OTHAYA/IHURIRIO/252.*

On the ground that the grant herein was obtained while the Milimani HC Succession Cause No.1509 of 2001 was ongoing.

He annexed the judgment dated 29th January 2016 and certificate of confirmation of grant issued on 16th August 2017 distributing the estate comprising of **Tetu/Ichagachiru/379**.

According to the affidavit of service filed by Patrick M. Mutisya on 17th December 2018- he served the application on the respondents on 24th October 2018 and 25th October 2018, and on 26th January 2019 James Njuguna Thuku process server filed another Affidavit of service that he served 1st respondent on 29th December 2018 with hearing notice for 18th February 2019; similarly John M. Chere filed Affidavit of Service on 28th January 2019 that he served 2nd respondent on 14th January 2019.

The respondents did not make any response to the application. Nor did they make an appearance in person on the hearing date.

Hence the application was not opposed.

The Issue then is should it be allowed in the terms it is sought?

The Nyeri Succession Cause 455/2009 is with regard to the Estate of Truphena Wambui Munyori (Deceased). The petitioners were Joshua Mwaniki Munyori and Peter Kihara Munyori. The matter before HC Milimani -1509/2001 is about the Estate of Rufus Munyori Matha alias Rufus Munyori. The applicant was James Muriithi Munyori and the Respondent Joshua Mwaniki Munyori

In filing the cause Joshua Mwaniki Munyori and Peter Kihara Munyori indicated that the 2 properties Tetu/Ichagachiri/379 and Othaya/Ihuririo/252 belonged to their mother and they anticipated a share of the Estate of their father Rufus Munyori in Cause 1509/2001.

They annexed two title deeds issued on 20th December 2004 showing that the two properties were registered in the names of Michael Kiruhi Munyori and Truphena Wambui Munyori through R.L 19.

The certificate of confirmation of grant that was issued to them on 9th October 2009 indicated that Joshua Mwaniki Munyori would hold ½ share of Tetu/Ichagachiri/379 at 9.7 acres in trust for the other beneficiaries, while Peter Kihara Munyori would hold ½ share Othaya/Ihuriro/252 in trust for the other beneficiaries. The other beneficiaries here would be their brothers and sisters in their mother's house.

In the meantime, the cause 1509/2001 had not been finalised as is evident from Judge Ougo's judgment delivered on 29th January 2016. Joshua Mwaniki Munyori participated in those proceedings where issues relating to the distribution of the estate were determined. In the judgment it is clear that the Judge took into consideration that there were 2 houses, that each was to get an equal share of the Estate – less the ½ acre- ¼ acre to the tea factory given by the deceased in his lifetime and ¼acre as a family grave yard. It is clear from the Nyeri Cause 455/2009 that Estate of Truphena Wambui Munyori was dependent on the outcome of the Distribution of the estate of her husband Rufus Munyori in Nairobi 1509 of 2001.

This distribution was finalised on the 16th August 2017 when the certificate of confirmation of grant was issued to Michael Kiruhi Munyori and Peter Kihara Munyori.

The orders there are that Peter Kihara Munyori and Joshua Mwaniki Munyori will still hold the share of their house in trust for the other beneficiaries. They are also joint proprietors of what is described as the family graveyard carved out of Othaya/Ihuriro/252.

Clearly it is grant in 1509/2001 that the petitioners in Nyeri 455/2009 should have used to file the cause for their mother's Estate as it appears it was entirely comprised of half the estate of Rufus Munyori.

The application was brought under section 76 (b) and (c) of the Law of Succession Act which provides for the Revocation or annulment of grant in the following terms:

A grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by any interested party or of

its own motion—

(a)

(b) that the grant was obtained fraudulently by the making of a false statement or by the concealment from the court of something material to the case;

(c) that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently;

The petitioners in Nyeri HC Succ Cause 455 of 2009 were aware that they could only distribute their mother's estate after the conclusion of the cause on their father's estate. It is evident that therefore the certificate of grant made on the 9th October 2009 by this court would not have been made if the court was aware that the cause 1509 of 2001 was still pending. I find therefore that the application is justified.

The following orders are appropriate in the circumstances:

a. That the grant of letters of administration to Joshua Mwaniki Munyori and Peter Kihara Munyori on 8th February 2008 with respect to the Estate of Truphena Wambui Munyori be and is hereby revoked under s. 76(b) and (c) of the Law of Succession Act and replaced by the grant issued and confirmed on 16th August 2017 to Michael Kiruhi Munyori and Peter Kihara Munyori in Nairobi High Court Succession Cause no. 1509 of 2001 Re Rufus Munyori Matha alias Rufus Munyori

b. Consequently, the Land Registrar Nyeri be and is hereby ordered to cancel the respondent's Registration in LR Tetu/Ichagachiru/379 and Othaya/Ihuriro/252.

c. Costs in the cause.

Dated, delivered and signed at Nyeri this 30th Day of April 2019.

Mumbua T Matheka

Judge

Court Assistant: Juliet

Michael Munyori

Grace Munyori

Judge