



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

SUCCESSION CAUSE NO. 1525 OF 2006

IN THE MATTER OF THE ESTATE OF BENJAMIN MUGO NJEGA (DECEASED)

JUSTIN NJUKI NJEGA.....APPLICANT

VERSUS

BERNARD NJEGA MUGO.....1ST RESPONDENT

JAMES MACHARIA MUGO.....2ND RESPONDENT

RULING

1. Before me for determination is an application for revocation of grant dated 8th September, 2017 filed by the Applicant herein seeking for an order that the letters of administration issued to the Respondents by this Honourable court be revoked and annulled. The application is premised on the ground that the grant was obtained by the Respondents fraudulently by making of a false statement and concealment of material facts.

2. The application is supported by an affidavit sworn by the Applicant on 7th September, 2017 in which he deposed that he is the administrator of the estate of his late father Harrison Njenga who is a brother to the deceased herein. He annexed a copy of a limited grant ad litem made to him in the High Court at Kerugoya as evidence of this.

3. The Applicant accused the Respondents of failing to disclose to the court that the property known as Plot No. 30B Kianyaga Market was held jointly by the deceased and the late Harrison Njenga. That the Respondents have since barred their family from accessing the plot or collecting rent from the tenants in the plot as they previously did. He urged that the Respondents are in the process of registering the plot in their names and denying the Applicant's family what is rightfully theirs.

4. Despite being served with the pleadings filed hereto as evidenced by the Affidavits of service on record, the Respondents did not file any documents in response to the application or appear in court.

5. Learned Counsel Mr. Kimemia filed written submissions dated 3rd December, 2018 on behalf of the Applicant in which he submitted that the present application for revocation of grant is only limited to the property known as Plot No. 30B Kianyaga-Market. Counsel contended that the Respondents ought to have named the Applicant as a beneficiary of Plot No. 30B – Kianyaga Market in their Petition for Confirmation of grant.

6. It was Mr. Kimemia's submission that failure to disclose material facts in a succession petition matter renders a grant issued thereon defective in substance and is one of the grounds upon which a grant may be revoked under **section 76 of the Law of Succession Act**. To buttress his point, Counsel cited the cases of **Julia Mutune M'Mboroki vs. Mugambi M'Mboroki & 3 Others, Succession Cause No. 66 of 1985 [2016] eKLR** and **Jesse Karaya Gatimu vs. Mary Wanjiku Githinji Succession Cause No. 95 of 2014 [2014] eKLR**.

7. Mr. Kimemia contended that the property known as Plot No. 30B – Kianyaga Market was jointly owned by the deceased herein and the Applicant's father. Counsel urged the court to grant the Applicant's prayers as sought stating that it will be fair and just so to do in light of the fact that the Respondents failed to file a response despite being served.

8. The law on revocation of grants is set out in **section 76 of the Law of Succession Act Cap 160** as follows:

“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. that the proceedings to obtain the grant were defective in substance;

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;....”

It is upon any party seeking the revocation or annulment of a grant to demonstrate the existence of any, some, or all of the grounds set out in **section 76** as outlined above.

9. The Applicant asked the court to revoke the Grant of Probate made to the Respondents on the ground that it was obtained by the concealment of a material fact being that the property known as Plot No. 30B-Kianyaga Market was held jointly by the deceased and one Harrison Njega, the father to the Applicant herein.

10. Mr. Kimeia submitted that letters from the defunct County Council of Kirinyaga dated 21st September, 2006 and 1st September, 2008 together with rates payment receipts written before the grant was confirmed demonstrate that the Applicant’s father was a co-owner of Plot No. 30B - Kianyaga Market.

11. The rates payment receipts are however not on record. The only evidence on record is the letter dated 21st September, 2006 from the defunct County Council of Kirinyaga addressed to “Whom it may concern” stating that one Mr. Harrison Njega Ndumunya is a partner in Plot No. 30B Kianyaga market. In law however, the only acceptable evidence of proof of ownership and title to land is a certificate of title or lease or a letter of allotment. Further a copy of the green card of the property would have sufficed to show the history of the said property or to show if the deceased herein held the land in trust for the Applicant’s late father.

12. Needless to say, the Applicant pointed out that the said Plot 30B was held jointly by the deceased herein and one Harrison Njega Ndumunya. In joint tenancy, when one of the joint tenants die, their interest in the property will automatically pass to the surviving joint tenant by virtue of the principle of survivorship, also known as *jus accrescendi*. There was nothing on record from which the court could glean the intention of the joint tenants herein to hold and use the property otherwise than as contemplated under joint tenancy to support the Applicant’s averment that the estate of the late Harrison Njega still retains a share in the property.

13. The Applicant failed to produce a death certificate of his father the late Harrison Njega Ndumunya, however from the grant *ad litem* issued to him by the High Court at Kerugoya and annexed to his application, the court gathers that Harrison Njega died domiciled in Kenya on 14th December, 1988. His death therefore preceded that of the deceased herein who died on 6th March, 1991. Under the doctrine of survivorship therefore, without more, upon Harrison’s death, his property rights over Plot 30B – Kianyaga market would automatically pass to Benjamin Mugo Njega, the deceased whose estate is in issue herein.

14. At the time of the deceased’s death Plot 30B – Kianyaga market belonged solely to the deceased herein and constitutes his net intestate estate which was distributed to his beneficiaries according to the terms specified in the Confirmed grant.

15. I note that the grant of representation which the Applicant herein seeks to revoke was confirmed to the Respondents on 24th March, 2009. It is therefore not in doubt that the Applicant herein has waited for almost ten (10) years before filing the present application when the estate of the deceased has long been distributed.

16. In view of what I have stated above and in the absence of additional evidence in support of the Applicant’s case, I am not persuaded that the application seeking revocation of grant filed by way of summons dated 8th September, 2017 has merit. Consequently, the application fails and is dismissed in its entirety.

It is so ordered.

SIGNED DATED and DELIVERED in open court this **10th day of April, 2019.**

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L. A. ACHODE

HIGH COURT JUDGE

In the presence ofAdvocate for the Applicant.

In the presence ofAdvocate for the Respondents.