



REPUBLIC OF KENYA

IN THE HIGH COURT AT KERUGOYA

SUCCESSION CAUSE NO.390 OF 2012

IN THE MATTER OF THE ESTATE OF JUSTIN MUNYI MURIITHI DECEASED

GLADYS WAMUYI.....APPLICANT

VERSUS

PETER NJIRU MURIITHIRESPONDENT

RULING

1. This matter relates to the estate of Phares Njeru Muriithi Alias Phares Njeru in succession cause No.29/2000 High Court Embu.
2. Peter Njiru Muriithi was issued with grant of letters of administration of the estate of Phares Njeru Mureithi and the same was confirmed on 07/11/2003 whereby the whole share of following the deceased's estates were distributed to as follows;
 - Ngariama/Rungeto/481 – Church Commissioners of Kenya
 - Ngariama/Rungeto/282 - Peter Njiru Muriithi
 - Plot No. 15 Githure Market - Peter Njiru Muriithi
 - Personal effects valued at Kshs.50,000/= - Peter Njiru Muriithi
 - Barclays Bank Embu A/c No. 58991904 - Peter Njiru Muriithi
 - Kirinyaga District Co-op Union Ltd Kiamutungu Branch A/c No. xxxxx - Peter Njiru Muriithi.
3. The Applicant has filed the summons for revocation/annulment of grant under Section 76 of the Law of Succession Act seeking an order that the grant issued on 7.11.2003 in Embu High Court succession cause No.29.2000 be annulled or revoked. It is based on the grounds that;
 - a) **That the grant was made fraudulently by making a false statement and concealment from the court something material, to wit; that land parcel No. Ngariama/Rungeto/481 and Plot No.15 Githure did not form part of the estate of the deceased as those properties belonged to one Justin Munyi Muriithi (Dcd) who is a brother to the Respondent and husband to the Applicant.**
 - b) **That the Respondent failed to disclose that L.R. No. Ngariama/Rungeto/481 and plot No.15 Githure was the subject of an earlier succession cause No.59 of 1995 at Kerugoya on the estate of Justin Munyi Muriithi (DCD) and the same had already been distributed to the Applicant in the grant.**
 - c) **The grant should be annulled to the extent of having the two (2) properties distributed to the Respondent and belonging to the estate of Justine Munyi Muriithi excluded.**
4. It is also supported by the affidavit of Gladys Wamuyu sworn on 10.8.2015. She depones that the respondent Peter Njiru Muriithi is a brother to her late husband Justin Munyi Muriithi.

APPLICANT'S CASE

The applicant Gladys Wamuyu states that the grant in respect of her deceased husband Justin Munyi Muriithi in **Succession Cause No. 59 of 1995** was confirmed in her favour and her husband's estates included **Ngariama/Rungeto/481** and **Plot No. 15 Githure Market**. That

Plot No. 15 Githure Market already registered in her favour was erroneously indicated as **Plot No. 12 Githure** in the grant and corrections made to the description. That **Ngariama/Rungeto/481** already registered in her favour remains encumbered due to double succession causes being taken out.

5. That the respondent by including the two estates did it fraudulently through concealment of material facts. In addition, the respondent had transferred to Church Commissioners of Kenya yet the deceased had never sold the land. She sought for annulment of grant to the extent of having the 2 properties excluded.

RESPONDENT'S CASE

In response, the respondent stated that the applicant's husband Justin Munyi Muriithi was the owner of **Ngariama/Rungeto/264**. They sold 1 acre to their other brother Phares Njeru Muriithi at a consideration of Kshs.15,000/=. He duly attended land control board and **Ngariama/Rungeto/264** was closed and new numbers were issued **Ngariama/Rungeto/480 and 481**. He was informed by the church that they are being evicted by the applicant in 2007 and they were informed by the land registrar that the applicant had presented another grant administering her husband Justin Munyi.

6. The applicant rectified the original grant in **Succession Cause No. 59 of 1995** to include the disputed land despite the fact that the title deed for Phares Njeru Muriithi had been lying at the land's office. He therefore placed a restriction on the land. That she also wants to fraudulently acquire **Plot No. 15 Githure Market** which was registered in the names of Phares Njeru, Perminus Kariuki and Justin Munyi. He called Gladys Waveti the administrator of Perminus Kariuki and they had **Plot No. 15 Githure Market** sub-divided into 3 portions. That the applicant only owns 1/3 of the said Plot.

REVOCAION OF GRANT

Section 76 of the Law of Succession Act Cap 160 states;

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

7. The applicant herein is seeking to revoke the grant issued to the respondent on ground that he included **Ngariama/Rungeto/481** and **Plot No. 15 Githure Market** which belonged to her husband. In **Succession Cause No. 59 of 1995**, the grant was confirmed on 05/10/2007 while **Succession Cause No. 29 of 2000**, the grant was confirmed on 07/11/2003. They both distributed **Ngariama/Rungeto/481** and **Plot No. 15 Githure Market**.

1. PLOT NO. 15 GITHURE MARKET

The plot was allocated to Phares Njeru, Perminus Kariuki and Justin Munyi and therefore the share for each of them was 1/3. In the applicant's confirmation of grant the share of her deceased's husband is indicated as 1/3 which she is entitled to and not the whole Plot.

In that regard, the grant in this case should also clearly indicate that the respondent is only entitled to 1/3 share out of Plot No. 15 Githure Market.

2. NGARIAMA/RUNGETO/481.

As per the green card entry no. 1 and 2, the land was registered under Justin Munyi Muriithi and was sold To Phares Njeru Mureithi for consideration of Kshs.15,000/= in 26/09/1980 and certificate issued. The deceased Justin Munyi passed away in 1995 therefore the land had been transferred before he passed away. The land therefore is not part of the deceased's estate.

8. The Land Registrar Kirinyaga Muthee Julius Kilimo testified that produced a green card for Ngariama/Rungeto/481 showing that the registered owner is Gladys Wamuyu who was registered in 19.7.2007 through a succession cause No.59/1995 in the Senior Resident Magistrate's Court at Kerugoya. He testified that Justin Munyi Muriithi was the registered owner on 26.9.1980 but there was another entry on the same date to on Phares Njeru Muriithi but the entry was not signed in the registers.

9. The parties agreed to file submissions. It is only the respondent who filed submissions. He submits that the applicant claim is on Land Parcel No. Ngariama/Rung'eto/481 and that during cross-examination she admitted that the land parcel was not included in the grant but was included in the rectified grant issued in 2007.

She could not tell whether or not her late husband Justin Munyi had sold the land parcel or not.

10. That her husband had never complained about theft of land. That she had only laid claim to the land because she had a confirmed grant

over the said property.

11. The grant issued to the applicant was issued on 7.11.2003 while the applicant applied for rectification of grant in the year 2006 after the respondent had been issued with the grant. That the applicant never stated that she was unaware of the existence of the grant by the time she applied to include the land parcel in her confirmed grant.

12. That when the respondent applied for the green card he was issued one which is annexed to his affidavit. It was undated and had unsigned entries. He applied to call the Land Registrar. That regrettably the Land Registrar attempted to sway the proceedings by supporting the applicant's version regarding the ownership of land parcel No. Ngariama/Rung'eto/481. That the Land Registrar had asked for time so that he could avail another certified copy but the court prevailed on him to produce the green card he was using. That the green card never supported the Land Registrar's testimony apart from E.I.E. against the entry. The green card never supported the land Registrar's testimony. That the green card which he produced had the entry signed.

13. It is further submitted that the Land Registrar cannot purport to unilaterally claim an entry is erroneous without informing the parties affected as that would amount to unfair administrative action. He refers to ***Simon Resourt Vs. Registrar of Titles & 5 Others eKLR*** where it was held that;

“under the section 60 of the Registration of titles Act Cap.281 Laws of Kenya (now repealed) the Registrar is required to summon the holder of a title in respect of which an erroneous entry has been made or a fraudulent title has been issued to deliver the title for correction failing which the Registrar has to apply to the Court for such a person to be summoned. The Registrar can only cancel or correct a title pursuant to an order of the court under section 61 of Registration of titles Act (repealed)”

14. That the entries were signed and the explanation by the Land Registrar on why he inserted E.I.E cannot hold any water. That the Registrar had no authority to cancel the entry. That land parcel No. Ngariama/Rung'eto/451 was in the name of Phares Njeru Muriithi by the time the succession cause was filed and was property included among the properties of the deceased.

15. I have considered the application, the evidence tendered and the submissions. The issue which arises for determination is the revocation of grant. ***Section 76 of the Law of Succession Act*** provides;

“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;”

This constitutes the law under which a grant whether confirmed or not may be revoked. A party seeking revocation or annulment of grant must prove that the proceedings were defective in substance, that grant was obtained fraudulently by making false statements and concealment from court something material to the case or by making untrue allegations of fact essential in point of law to justify the grant not withstanding that the allegation was made in ignorance or inadvertence.

16. Where the property which does not form the estate of a deceased is indicated in the schedule of assets and distributed, it may be a sufficient ground to order such a grant to be revoked. It is therefore important for this court to determine the ownership of Land parcel No. Ngariama/Rung'eto/481. It is the petitioners case that the land was sold to the deceased by his brother Justine Munyi Muriithi way back in 1984.

17. I am inclined to believe the Petitioner because even when the applicant filed succession in the estate of her deceased husband, she never included land parcel No. Ngariama/Rung'eto/481. It is also deponed by the petitioner and this is a fact which is not denied by the applicant that she had never occupied the land parcel Ngariama/Rung'eto/481 until the year 2007 which is the year she rectified the grant to include the land parcel and managed to get herself registered.

18. The Petitioner filed succession cause No.29/2000 and the grant was confirmed on 7.11.2003. The grant in succession cause No.59/1995 the grant was confirmed in 5.10.2007 and distributed land parcel Ngariama/Rung'eto/481. The applicant in her initial application had not included the land parcel No. Ngariama/Rung'eto/481.

19. The documents available from the land office show that the land parcel was registered in the name of the deceased Phares Njeru Muriithi as of 26.9.1980. This was during the lifetime of the deceased Justin Munyi Muriithi. At the time Justin Munyi died, the property was registered in the name of deceased Phares Njeru. It never formed the estate of the deceased, Justin Munyi Muriithi.

20. It was therefore fraudulent for the applicant to seek to rectify the grant to include land parcel No. Ngariama/Rung'eto/481 which did not form part of the estate of her deceased husband.

21. The evidence of the Land Registrar was worthless and unreliable as he misled the court that the registration of Phares Njeru Muriithi was in error without producing any supporting documents. The entries on the green card were made the same day. The Land Registrar admitted

that it was possible back then to have the entries registered on the same day. The entries were made the same day and the Land Registrar did not convince the court how one entry can be made the same day can be said to be correct and the other be said to have been made in error. The Land Registrar insisted that the entry showing that PHARES was registered as the owner was not signed. He however produced a green card showing that the entries were signed until somebody indicated E.I.E. The Land office issued a certificate of official search dated 23.2.2005 with the first entry of 26.9.1980 Justine Munyi Muriithi. This was used in the application for rectification of grant by the applicant and a grant was issued on 9.2.2007 including land parcel No. Ngariama/Rung'eto/481.

22. This transaction to include the land parcel Ngariama/Rung'eto/481 in the estate of the applicant's deceased husband was fraudulent.

23. Fraud defined as intentional deception to secure unfair or unlawful gain or to deprive a victim of a legal right. Fraud can violate Civil Law, a Criminal Law or it may cause no loss of money, property or legal light but still be an element of another civil or criminal wrong, Wikipedia.

24. The actions by the land Registrar to issue a search which was not a true reflection of the ownership was fraudulent. The applicant colluded with the land office where she used to work to have the land registered in her name. Though there was a grant, it has emerged from the evidence that the grant was obtained fraudulently. I find that a fraudulent transaction cannot confer good title to the applicant. The land was registered in the name of the deceased and no law was cited to prove that the registration was not valid for want of signature. There was no denial by the Land Registrar that the green card issued to the applicant was issued by the Land office. The Land Registrar did not tell how a member of the public was expected to know the entry was not signed. This is a case of involving shameless and egregious fraud at the lands office. The deceased was the registered proprietor of the suit land having bought it at a consideration of Kshs.15,000/=. The Land Registrar could not cancel that registration on the pretext that it was made in error. If the registration of the deceased had an error, it could only be changed as provided under the law. The Land Registrar ought to have told the parties to have the dispute solved in court. **Section 143 of the Registered Land Act** provided:-

“Subject to subsection (2) the court may order rectification of the register by directing that any registration be cancelled or amended where it is satisfied that any registration other than a 1st registration has been obtained made or omitted by fraud or mistake. The register shall not be rectified so as to affect the title of a proprietor who is in possession and acquired the land lease or charge for valuable consideration unless such proprietor had knowledge of the omission fraud or mistake or substantially contributed to it by his act, neglect or default.”

25. The land was registered under the **Registered Land Act, Cap. 300**, repealed and so the provision is applicable. The Land Registrar had no power to cancel the entry in the registrar without involving the registered owner or his legal representative. It is the court which had power to order rectification of register. There is a guarantee that entries in the register are correct and members of the public can freely and securely rely on them. This is informed by the assurance in Torrens Land registration system that entries in the register are correct. The **Court of Appeal in DENIS NOEL MUKHOLO Ochuando & Another Vs. Elizabeth Murungari & Another [2018] eKLR** lamented that;

“Unfortunately, as we have noted at the beginning of this judgement Land officers who lack integrity and freely allow themselves to be complicit in fraud and forgery affecting land transactions effectively undermine the guarantee given by this registration system”

26. This aptly fits what happened here. In the case of **Shimoni Resort Vs. Registrar of Titles & 5 Others, [2016] eKLR** the issue as to whether the cancellation of title contravened **Section 47 of Constitution** was considered and the court held the Registrar was required to summon the person registered or apply to court to cancel or correct the title. That the registrar's action to cancel the entries was unlawful and the actions were ultra vires. He also relied on the case of **Kuria Greens Ltd. Vs. Registrar Of Titles & Another [2011] Eklr & Isaac Gatungu Wanjohi & Another Vs. Attorney General** which held that it is now settled law that a registrar has no power to cancel a title deed.

27. I find that the Land Registrar had no power to cancel the entry in the register removing the name of the deceased as the proprietor.

28. The applicant by seeking to have the land parcel No. Ngariama/Rung'eto/481 form estate of the deceased is an attempt to perpetuate the fraud which she committed in collusion with the land office. This cannot be allowed as it is an attempt to sanitize her unlawful actions.

29. Having considered the circumstances of this case, I find that the applicant has not proved any of the grounds under Section 76 of the Law of Succession Act to warrant the court to order the revocation of grant. The green card which was produced in this court shows that the land was sold to Phares Njeru Mureithi at a consideration of Kshs.15,000/= on 26.9.1980 and certificate issued. Justin Munyi died in 1995 and so at the time of his death he had transferred the land to the deceased. At the time the grant was confirmed the land belonged to the deceased and did not form part of the estate of deceased Justin Munyi. On the issue of plot No.15 the applicant depones that the plot was sub-divided and allocated. There is no ground to warrant revocation as the grants can be amended if need be. The applicant is not a beneficiary of the estate of the deceased. I find that she has no interest in the estate and has no good reason to upset the grant. It is only a person who has an interest in the estate who can apply for revocation of the grant. Where one has no interest in the estate as a beneficiary, he/she must approach the court in a **Civil dispute, Rule 44 (1) of the Probate and Administration Rules** state

“Where any person interested in the estate of the deceased seeks pursuant to the provisions of section 76 of the Act to have a grant revoked he shall save where the court otherwise directs....”

30. I have put emphasis. The applicant has no interest in the estate of the deceased. The applicant is also not a beneficiary as defined under **Section 29 of the Act**. The applicant has not come to equity with clean hands. I find that the application lacks merit. The land parcel in dispute was registered in the name of the deceased. The Land Registrar had no jurisdiction to cancel the register. Under the Law of Succession Act it is only the title of an innocent purchaser for value which is protected. Transactions involving the estate of the deceased other than provided under the Act are criminal acts termed intermeddling under **Section 45** which provides:-

“(1) Except so far as expressly authorized by this Act, or by any other written law, or by a grant of representation under this Act, no person shall, for any purpose, take possession or dispose of, or otherwise intermeddle with, any free property of a deceased person.

(2) Any person who contravenes the provisions of this section shall-

(a) be guilty of an offence and liable to a fine not exceeding ten thousand shillings or to a term of imprisonment not exceeding one year or to both such fine and imprisonment; and

(b) be answerable to the rightful executor or administrator to the extent of the assets with which he has intermeddled after deducting any payments made in the due course of administration”

I find that the registration of the applicant on the suit was fraudulent, unlawful and amounted to intermeddling of the estate of the deceased.

31. I order that the entry in the register of the applicants name in Land parcel No. Ngariama/Rung’eto/481 shall be cancelled and the property be restored to the estate of the deceased.

32. The application for revocation of grant is dismissed. Costs to the respondent.

Dated at Kerugoya this 29th day of July 2019.

L. W. GITARI

JUDGE