



REPUBLIC OF KENYA

IN THE HIGH COURT AT EMBU

SUCCESSION CAUSE NO. 3 OF 2019

IN THE MATTER OF THE ESTATE OF MBARIRE MURUANGINYE alias ANDREA NJIRU MBARIRE (DECEASED)

EMILIO NJAGI ENDEREA.....1ST APPLICANT

ELIJAH NJERU ENDEREA.....2ND APPLICANT

JOSEPH KARIUKI NJIRU.....3RD APPLICANT

VERSUS

MICHAEL IRERI ANDREW.....1ST RESPONDENT

JERUSA KINA NJIRU.....2ND RESPONDENT

RULING

A. Introduction

1. This is a ruling for the summons for revocation of grant dated 13th September 2016 in which the applicants seek the revocation of grant issued on the 10th November 2015.
2. It is the applicants case that despite being beneficiaries to the deceased's estate, they were not involved in the succession proceedings and further that the names indicated in the chief's letter relied on by the respondents are not names of the deceased's beneficiaries.
3. The applicant further states that that they will suffer irreparable losses if the grant is not revoked as they will lose the land which they have occupied since birth. The applicants also urge court to reverse the registration of land parcels No. Kagaari/Kanja/3172, 3173 and 3175 which compromise the deceased's estate.
4. It is also the applicants' case that Mbarire Muruangingye, the deceased, and Andrea Njiru Mbarire are two different people, the latter being the son of the former. The witness of the applicants, Dr. Bishop Samuel Njagi Nginye, further states that the death certificate used in the succession proceedings is not of that of the deceased Mbarire Muruangingye.
5. In rejoinder, the 1st respondent deposed that Mbarire Muruangingye, the deceased, and Andrea Njiru Mbarire are one and the same person, the respondents' father, whose estate these proceedings belong. Further, it is the respondents case that the applicants were aware of the succession proceedings, that their names were included in the list of beneficiaries and that they got their share from the deceased's estate.
6. The 2nd respondent and one Bilia Wambogo testified in support of the respondents' case that they subsequently sold their share of inheritance bequeathed to them as the applicants were harassing and frustrating them.
7. The parties filed submissions to dispose of the matter.

B. Applicants Submissions

8. The applicants submit that the deceased had the following children in his lifetime;

a) Andrea Njiru Mbarire who died in 1996

b) Mbiria Wambogo Nyaga

c) Jerusa Kina

d) Leso Riemi – deceased

e) Tabitha Igandu – deceased

f) Emilio Njagi Enderea

g) Elijah Njeru

h) Michael Ileri Enderea

9. It is the applicants' submission that in the petition for grant of letters of administration, the respondents stated that the deceased was survived by only three children, the second, third and eighth on the list above to their exclusion.

10. It was further submitted that the respondents further misrepresented the facts in Form P&A 80 wherein it was stated that the applicants had issued citation and renounced their right to apply for grant. The applicants further submitted that the death certificate filed in the petition for letters was that of Andrea Njiru Mbarire and not the deceased.

C. Respondents Submissions

11. It is submitted that before the deceased passed on he had subdivided his land and allocated all his children their portions however the same were not registered and transferred. Further it is submitted that each of the sons had built on their own portions and when the deceased passed on the respondents obtained grant of administration so that they could sell their portions.

12. The respondents submit that being administrators of the deceased's estate, they lawfully sold their portions to one Gregory Murage Kinyua who thus became a valid purchaser for value duly protected by Section 93 of the Law of Succession Act.

13. It is also submitted that the deceased held land parcel no. Kagaari/Kanja/3172 in trust for his daughters, that is the 2nd respondent and Bilia Wambogo Nyagah.

D. Analysis & Determination

14. This court has gone through the evidence tendered and affidavit filed in this cause as well as the submissions filed by both parties in support thereof.

15. The issue for determination is whether or not the applicants have satisfied this court that grounds exist to revoke or nullify the grant herein in accordance with the provisions of **Section 76** of the **Law of Succession Act**. **Section 76** provides five grounds upon which a grant can be revoked by this court either on an application by a interested party or on its own motion in brief the grounds are: -

a) ***Defect in proceedings to obtain the grant***

b) ***Fraud and concealment by a petitioner***

c) ***False allegations***

d) ***Failure to diligently carry out the administration***

e) ***When a grant becomes inoperative or useless through subsequent circumstances.***

16. It is the applicants' contention that despite being beneficiaries to the deceased's estate, they were not involved in the succession proceedings, that the chief's letter relied on by the respondents did not list the names of the deceased's children and that it further went on to list one Gregory Murage Kinyua as a survivor of the deceased. The respondents deny this and state that they involved the applicants in the proceedings, that they subsequently obtained grant and proceeded to sell their portions to a third party.

17. Despite there being no rebuttal of the fact that the applicants are children of the deceased, I note their names are not included in the list of as a survivors of the deceased. It does not matter what the wishes of the deceased were but all the beneficiaries of the deceased must be included in the cause. Any disputed issues are best ventilated in hearing of the cause between all the interested parties.

18. By failing to include the name of the applicants as survivors of the deceased, the respondents acted contrary to the law which requires all interested parties be cited.

19. **Section 51(2)** of the **Law of Succession Act** provides that an application for grant shall include information as to: -

“(g) In cases of total or partial intestacy, the names and addresses of all surviving spouses, children, parents, brothers, sisters of the deceased and of the children of any child of his or hers then deceased.”

20. It is not in dispute that the applicants were not cited in this cause as required by the law. Neither were they involved in the distribution of the estate. The administrator did not disclose to the court that they had omitted some beneficiaries from this cause. I am therefore of the considered view that the grant was obtained through non- disclosure of facts that were material to the case and also fraudulently.

21. The applicants also seek the reversal of the registration of the land parcels forming part of the deceased’s estate. The respondents are opposed to this and argue that after obtaining grant and becoming administrators of the deceased’s estate, they lawfully acquired and sold their portions to one Gregory Murage Kinyua who thus became a valid purchaser for value duly protected by section 93 of the Law of Succession Act.

22. It is undeniable that the purported sale to one Gregory Murage Kinyua was entered into before the grant was confirmed. This clearly was in violation of the provisions of Section 82 (b) of the Law of Succession Act. The same provides thus:

“No immovable property shall be sold before confirmation of grant”.

23. Again section 45 (1) of the Law of Succession Act forbids any person from inter meddling with the property of a deceased person as follows:

“Except so far as expressly authorized by this Act, or by any Written Law or by a grant of representation under this Act no person shall for any purpose take possession or dispose off or otherwise meddle with any free property of a deceased person”.

24. This court has powers to order the cancellation of a title deed fraudulently acquired in a deceased’s estate. In the cases of Madison Maroko Nyamweya v Benard Magara Maroko & Another [2016] eKLR and Santuzza Billoti alias Meisantuzza (deceased) v Giacania Balasconi [2014] eKLR held as follows: -

“Further s succession court can order a cancellation of a title deed if the deceased's property is being fraudulently taken away by non beneficiaries such as where the property is being sold before the grant is confirmed”.

25. The above authority is relevant to circumstances of this case. Gregory Murage Kinyua is not a beneficiary of the estate of the deceased and I am persuaded that the acquisition of Kagaari/Kanja/3172 was fraudulent and contrary to the law.

26. The law does not sanction the distribution of the estate to non- beneficiaries especially when those persons had not purchased the land from the deceased himself and further had purported to have bought land from beneficiaries before the grant was confirmed. Any titles obtained under those circumstances are amenable to cancellation by a succession court.

27. I find that this summons for revocation is merited and allow it in the following terms: -

a) That the grant confirmed on 10/11/2015 is hereby revoked and any transaction based on the said grant is hereby declared null and void.

b) That the current registrations of deceased parcels of land namely: -

i. Kagaari/Kanja/3172

ii. Kagaari/Kanja/3173

iii. Kagaari/Kanja/3175

are hereby cancelled and that the said parcels revert in the names of the deceased.

c) That the 1st and 2nd applicants Emilio Njagi Enderea and Elijah Njeru Enderea are hereby appointed administrators of the estate.

d) That the two administrators or any of them do file an application for confirmation of grant within 45 days having involved all the beneficiaries of the estate.

e) That each party to bear their own costs.

28. It is hereby so ordered.

DELIVERED, DATED AND SIGNED AT EMBU THIS 25TH DAY OF NOVEMBER, 2019.

F. MUCHEMI

JUDGE

In the presence of: -

Mr. Kamunyori for Applicants

Mr. Kassim for Andande for Respondents