



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERUGOYA

MISCELLANEOUS SUCCESSION CAUSE NO.71 OF 2013

IN THE MATTER OF THE ESTATE OF JOHN MBOGO KARURIDECEASED

WINFRED WANJIKU GICHURI.....APPLICANT

VERSUS

FAITH WAWIRA MBOGO.....RESPONDENT

RULING

1. This matter relates to the estate of JOHN MBOGO KARURI deceased who died intestate on 28.3.1974. A grant of Letters of Administration were issued to FAITH WAWIRA MBOGO in Embu High Court Succession Cause No.31/1994 on 30.8.1996.

The applicant filed an application dated 2.8.2013 seeking revocation of grant of Letters of Administration of the estate of JOHN MBOGO KARURI which were issued to FAITH WAWIRA MBOGO. She states that she is the sister of the deceased and the Respondent filed the succession cause secretly and without informing the other members of the family. That the respondent is now the sole beneficiary of the estate BARAGWI/GUAMA/51 which was held in trust by the deceased for the family of KARURI.

2. According to the applicant, the deceased's estate was given to the deceased's mother MARY MUTHONI KARURI on behalf of her husband who had passed away. However, since women had no ID cards and could not get land, the same was registered under her son's name JOHN MBOGO KARURI to hold in trust for himself and the family members. The Respondent later came to live with the deceased as his girlfriend claiming that he impregnated her but which the deceased denied and she left until their mother became ill. She came back and managed the land and when their mother passed away she stayed on as paid domestic worker.

The witness statements were adopted in court as evidence. According to them, between 1958 and 1959, they gave the deceased then a minor the land because women were not eligible to be registered as proprietors of land and the mother had given out the deceased's name.

The Respondent did not adduce any evidence and therefore the applicant's evidence was unchallenged.

3. The issues which arises before me is revocation of grant. The law on revocation of grant under Section 76 of the Law of succession Act (Cap.160) Laws of Kenya and Rule 44 of the Probate and Administration Rules. Section 76 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 court of something material to the case.

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

4. For the Court to order revocation of grant a party must prove to the court may act on its motion if it is proved that;

· ***Proceedings to obtain the grant were defective in substance.***

· ***The grant was obtained fraudulently by the making of a false statement***

- *Or concealment from court of something material to the case*
- *That the grant was obtained by means of untrue allegations.*

A party need not prove all the above matters, prove of any one of them will lead to the revocation of the grant.

5. The Respondent has deponed that the Respondent filed the grant secretly and without informing other members of family. That the Respondent knew very well that there were other siblings of the deceased who should have gotten a share of the estate. These averments have not been denied.

6. The applicant has also raised the issue that the deceased was registered in trust for the family. A witness MWAI KATHENGE in a witness statement filed in Court on 11.4.2017 stated that MUCIRA KARURI was allocated six acres but he was a child. Land was given to MELI wife of KARURI but because she was a woman she was not eligible to be registered as proprietor of land. She gave the name of KARURI MBOGO who was registered in trust for the family.

7. The applicant has filed a lengthy statement which she also adopted as her evidence to say that land parcel NO.BARAGWE/GUAMA/51 was family land which was allocated by the clan and registered in the name of JOHN MBOGO KARURI to hold in trust for the other siblings who are SIMON NJIRU, BANCY WAWIRA KARURI and DAVID KARIUKI KARURI.

These averments were not controverted as the Respondent did not file a replying affidavit or a witness statement.

8. It is now well settled that person who were registered during land demarcation held the land in trust for other members of the family in what is called customary trust. Though the title deed does not disclose that the person is registered in trust, that was immaterial if the other members of the family proved that the person who in trust cases was the first born son was registered in trust. Such trusts were protected under Section 28 and 30 (g) Registered land Act (Cap.300) now repealed. Such trusts are recognized as overriding interests in land.

9. Even after the repeal of the Registered Land Act (Cap.300) the clan Land Registration Act (2012) which is to consolidate and rationalize the registration of titles, the issue of customary trust is addressed at Section 28 (b) of the Act.

10. It is now accepted by the court in this country that Section 30 (g) of the Registered Land Act provided for customary trust. Section 28 (b) of the Land Registration Act specifically provides for overriding interests as may subsist on the land and affect if without it being noted on the register as such customary trust. In the case of Kanyi Muthiora (1984) KLR 712 .C.A it was stated that;

“The registration of the Land in the name of appellant under the registered land Act (Cap.300) and not extinguish the Respondents rights under Kikuyu Customary Law and neither did it relieve the appellant of her duties or obligations under Section 28 as trustee”

Further in Mbui Mukangu Vs. Gerald Gatwiri Mbui C.A. NO.281/2000. The court stated that customary trust is a concept of intergenerational equity where the land is held by one generation for the benefit of another.

11. The applicant’s contention that herself and her siblings have lived on the land, planted tea and coffee has not been rebutted. The Respondent concealed material facts from the Court that there were other beneficiaries who ranked in priority to her and who were entitled to the estate of the deceased. The Respondent had herself registered as sole proprietor without making provision for the applicant and her siblings. The applicant has adduced sufficient evidence to prove that the grant should be revoked.

IN CONCLUSION

I order that the grant issued to FIATH WAWIRA MBOGO in succession Cause No.31/1994 at Embu High Court is revoked.

- The Respondent is removed from the cause as an Administratrix.
- I appoint the Applicant WINFRED WANJIKU GICHURI as the Administratrix of the estate of the deceased.
- Each party to bear it’s own costs.

Dated at KERUGOYA this 20th December, 2019.

L.W. GITARI

JUDGE

COURT

Ruling read out in open court.

L.W. GITARI

JUDGE