



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

SUCCESSION CAUSE NUMBER 1 OF 1999

IN THE MATTER OF THE ESTATE OF

PERMINUS MWANGI GITENGI ----- DECEASED

GITHENGI P. MWANGI ----- APPLICANT

-VERSUS-

FLORENCE WANGUI MWANGI)

SUSAN NJOKI MWANGI) ----- PETITIONERS/RESPONDENTS

RULING

1. By way of Summons for the Revocation and/or Annulment of Grant dated 28/7/2016 Githengi P. Mwangi (hereinafter, the Applicant) seeks orders;

1. Spent.

2. THAT the Honourable Court be pleased to cancel all those titles No's Naivasha Mwachiringiri Block 4/22298, Naivasha/Mwachiringiri Block 4/22299, Naivasha/Mwachiringiri Block 6/240, Naivasha/Mwachiringiri Block 242, Karagita S. H. Group Plot No. 56, Karagita S. H. Group Plot No. 396/31/57 and Malewa Scheme Plot No. 602.

3. THAT the Honourable Court do revoke/annul the Grant of Letters of Administration issued to the Respondents on 19th October, 2010.

4. THAT costs of this application be provided for.

2. The Application is premised on 2 grounds namely;

(i) That the grant was obtained fraudulently by failure to include all the beneficiaries of the deceased in the distribution of the estate.

(ii) That the Petitioners were not the only Dependants/Beneficiaries of the deceased.

A supporting affidavit is also on record.

THE APPLICANT'S CASE

3. The Applicant's case is that he is the elder son of Perminus Mwangi Githengi (deceased). The deceased left the following children;

1. Joseph Mwangi Githengi
2. Philis Muthoni Mwangi
3. Judy Muthoni Mwangi
4. Simon Karenjo (deceased)
5. Paul Muya (deceased)
6. Joseph Kamau
7. Ben Waweru (deceased)
8. Jane Wanjiru
9. Samwel Githaiga
10. Joseph Kanina
11. Njeri Mwangi
12. Jeremiah Ndungu(deceased)
13. Mary Njeri
14. Stephen Kariuki

4. The Petitioners are accused of seeking confirmation of grant and distributing the entire estate to themselves. A Certificate of Confirmation of Grant is annexed.

5. The Petitioners have proceeded to subdivide parcels Naivasha/Mwichiringiri Block 4/3260 into 2 namely Naivasha/Mwichiringiri/Block 4/22298 and Naivasha Mwichiringiri Block 4/22299. They have since transferred the two (2) parcels and Block 6/242 to 3rd parties.

THE RESPONDENTS' CASE

6. Judy Muthoni has with authority of her co-petitioner sworn a Replying Affidavit opposing the summons.

7. She states that the Applicant refused to co-operate in the Succession Cause. It is urged that allowing prayer 3 of the summons will serve no good purpose as it will waste the estate and that the estate is already distributed and registered into beneficiaries names.

8. It is added that properties Nos. Naivasha/Mwichiringiri Block 6/240 and Block 6/242 are not known to the family and were not mentioned in the grant.

9. Property Naivasha/Mwichiringiri/Block 4/22298 have long been sold. Some properties have been registered in the names of the administrators to hold in trust for the beneficiaries. Property Naivasha/Mwichiringiri Block 4/3268 was distributed to the 2nd house and has been disposed off to third parties.

10. The Applicant is accused of being a nuisance who has occupied parcel No.

Naivasha/Mwichiringiri/Block 4/3268 since the said land has been sold and the Applicant has no rights thereon.

SUBMISSIONS

11. On 15th February 2017, on a date taken in Court on 28th November 2016 in the presence of counsels for both parties, directions were given that the summons be disposed off by way of written submissions.

12. On record are submissions by the Petitioners/Respondents only.

13. It is submitted that the application before Court is made in bad faith and has no legal basis. The Petitioners herein substituted the erstwhile Petitioners who were widows of the deceased and who are since deceased. All procedures were followed.

14. The Applicant does not indicate which legal procedures were flouted in obtaining the grant and it is the Respondent's case that this case is motivated by a selfish move by the Applicant to waste and defraud the estate of the deceased. This sinister motive is illustrated by the Applicant using a fictitious name that belongs to the deceased.

15. It is submitted that the Respondents have not distributed the estate to themselves as they are holding the respective portions in trust for the respective houses that they represent.

16. Joseph Mwangi Githengi, Samuel Githaiga (deceased) and Njeri Mwangi all listed by the Applicant as beneficiaries of the deceased are not so as they are not children of the deceased. The list also alleges that Simon Karenjo is deceased while he is not.

17. Plot Nos. Nyandarua/Malewa Block 4275 and Nyandarua/Malewa/4274 are registered in the names of the Petitioners and held in trust for the beneficiaries of the two (2) families. Parcel of land Nos. Naivasha/Mwichiringiri Block 6/240 and Block 6/242 mentioned by the Applicant are unknown to the family.

18. It is urged that the Application herein should fail.

ANALYSIS AND DETERMINATION

19. I have had regard to the application and the affidavits on record as well as the submissions by the Petitioners/Respondents.

20. The question for determination is whether the Applicant has achieved the threshold for the revocation of a grant within the meaning of Section 76 of the Law of Succession Act.

21. That Section provides;

“Section 76: 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;

(d) that the person to whom the grant was made has failed, after due notice and without reasonable cause either -

(i) to apply for confirmation of the grant within one year from the date thereof, or such longer period as the court has ordered or allowed; or

(ii) to proceed diligently with the administration of the estate;

or

(iii) to produce to the court, within the time prescribed, any such inventory or account of administration as is required by the provisions of paragraphs (e) and (g) of section 83 or has produced any such inventory or account which is false in any material particular; or

(e) that the grant has become useless and inoperative through subsequent circumstances.

22. The mainstay of the Applicant's case is that grant was obtained fraudulently by failure to include all the beneficiaries of the deceased and that the Petitioners were not the only dependants of the deceased. It is further alleged that the Respondents distributed the estate to themselves.

23. I have looked at the form P & A 5 filed by Florence Wangui Mwangi and Susan Njoki Mwangi, the initial administrators of the estate herein. I notice the Applicant is listed as a beneficiary. His assertion that some beneficiaries were left out is not supported by any evidence. The alleged beneficiaries left out have not been involved in this application and neither has the Applicant laid evidence of their relationship with the deceased if at all.

24. There is no evidence at all that the Applicant was not aware of the proceedings in the Succession Cause. There is no claim and there is no evidence that he ranked higher in priority than the administrators.

25. The said cause was duly gazetted vide Gazette Notice No. 746 of 19th February, 1999.

26. The Applicant never moved during the subsistence of the Succession Cause to raise any objection or protest if aggrieved by the action of the administrators.

27. In the event that the Applicant was dissatisfied with the distribution of the estate, the open route for him was to lodge a protest. He didn't.

28. The Applicant purports to represent interests of others in his application yet he exhibits no authority so to do as required in Law. In the end he appears a lone ranger whose grouse is not grounded in Law.

29. On the material before me, the grant herein is regular. There is no evidence of a false statement or concealment of material fact from the Court. There is no untrue allegation of fact and indeed the Respondents duly applied for confirmation of grant and the grant shows they are holding the property in trust for the two(2) houses they represent.

30. In the premises, the Applicant fails miserably to achieve the threshold set in Section 76 of the Law of Succession Act.

31. The summons herein must fail. The same is dismissed. Being a family matter, each party to bear its costs.

Dated and Signed at Kisii this 10th day of January, 2018.

A. K. NDUNG'U

JUDGE