



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

SUCCESSION CAUSE NO. 200 OF 2012

In the Matter of the Estate of Mutunga Maraa

alias M' Mutunga Maraa (Deceased)

NEWTON KINYUA MARETE.....APPLICANT

-Versus-

EDWARD MARETE M' MUTUNGA.....PETITIONER

RULING

Revocation of grant

[1] Before me is a Summons dated 9th July 2013, in which the Applicant has sought the revocation/annulment of grant of letters of administration issued to the Petitioner (Mutunga Maara) on 6th May 2013.

[2] The Applicant is the son of the Petitioner hence a grandson of the deceased. It was his case that this succession cause was filed secretly without his knowledge and that the said Grant was obtained by fraud. He stated that the deceased shared all his properties in his lifetime especially Land Parcel No. Nyaki/Nkabune/152 to his dependants including the Applicant. Yet, the Applicant was not included in the aforesaid Grant despite having a share in Land Parcel No. Nyaki/Nkabune/152. He said that he is now totally disposed of his entitlement in the estate. And so, on the basis of these reasons, he urged the court to revoke the grant.

[3] The Petitioner opposed the application via a Replying Affidavit sworn on 22nd September 2014, in which he deposed inter alia that: (1) this succession cause related to his father; (2) the Applicant was the Petitioner's case and was never given any land by the deceased; and (3) as such, he is not a beneficiary of the estate. Therefore, his consent was not needed at the time of filing and confirmation of the grant.

[4] When the matter came up for hearing on 24 September 2014, it was agreed that it be canvassed by way of viva voce evidence. PW1 Newton Marete (the Applicant herein), testified that the deceased gave him land when he was a child. It was his testimony that the deceased was blind and so, he and his mother were taking care of the deceased. He gave further evidence that they took the deceased to the lands office with Cecilia Kanyoni and his mother, and that the deceased had said that the Petitioner should not accompany them to the lands office. In his testimony, the Applicant stated that the deceased subdivided his land (No.152), and after subdivision he got No. 872 (1 acre), Cecilia got an acre and the balance

remained for his father (the petitioner). He told the court that the deceased had stated that the land will be registered in his name until he grew up. But, his father (the petitioner) sold his said land and demolished his house. It was his evidence that his father chased his mother away when he was a child and that he has been living on the streets since then.

[5] PW2 Helen Kananu testified that the Applicant was his son and that the deceased had gone to the lands office to have his land subdivided whereupon No. 872 went to her son (the applicant), 873 to Cecelia Kanyoni and 874 to Edward Marete. It was her further evidence that the deceased had told her that 872 was in his name but once the Applicant was of age, he would have it in his name.

DETERMINATION

[6] This is an application for revocation or annulment of grant. I will not re-invent the wheel. The legal test is known and is provided for in section 76 of the Law of Succession Act as follows:

76 Revocation or annulment of grant

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 order or allow; 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

iv. that the grant has become useless and inoperative through subsequent circumstances.

[7] Looking at the evidence and the nature of claims being, it seems the Applicant is alleging that:-

(a) The proceedings to obtain the grant were defective in substance; or

(b) 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; or

(c) 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

[8] What does the evidence portend? The evidence by PW1 and PW2 shows that the deceased subdivided his land during his lifetime. The evidence to the effect that Land Parcel No. 872 (1 acre) was given to the Applicant, Cecelia Kanyoni got 1 acre (No. 873) and the balance (No. 874) was given to the petitioner remained consistent throughout the hearing and was not rebutted by any evidence. In fact, the Petitioner did not call any evidence to rebut that evidence. Similarly, the contention by PW1 that the Petitioner had chased him away remained uncontroverted.

[9] Upon careful consideration of this application, the rival contentions by the parties and the evidence on record, I am of this view. Contrary to the Petitioner's contention that he was the only beneficiary of the deceased, prima facie evidence show that the Applicant is also a beneficiary of the estate by virtue of being a grandson of the deceased and had been given part of the estate by the deceased. Accordingly, he ought to have notified him of and also include him in these proceedings. He did neither of these things. He therefore committed two great evils: he did not notify the Applicant and he concealed that the Applicant was a beneficiary of the estate. Here I cite the case of **SAMUEL WAFULA WASIKE -vs- HUDSON SIMIYU WAFULA CA NO.161 OF 1993** (Kwach, Omolo and Tunoi JJA) where it was held:-

“A grant obtained on the strength of false claims,...and on the basis of facts concealed from the court, is liable to revocation.”

See also what Koome J (as she then was) stated in **THE MATTER OF THE ESTATE OF NGARI GATUMBI ALIAS JAMES NGARI GATUMBI (DECEASED NAIROBI HIGH COURT SUCCESSION CAUSE NO.783 of 1993** (persuasively) that:

“A grant will be revoked where a person who is entitled to apply is not notified by the petitioner of their intention to apply and that person's consent to the petitioner's application is not sought.

[10] The threshold in Section 76 of the Law of Succession Act CAP 160 of the laws of Kenya has been met. Accordingly, this grant is a perfect candidate for revocation. And, without much ado, I hereby revoke the grant issued herein to the petitioner on 6th May 2013. As the policy of law is that, no estate should remain without an administrator, I direct parties to intimate to the court in writing within 7 days, the person or persons to be appointed administrator(s) of the estate, which failing I shall appoint administrator(s) of the estate in exercise of my final discretion under section 66 of the Law of Succession Act. And of course after taking into account the law and the best interest of all persons concerned. This being a succession matter, there will be no order as to costs. It is so ordered.

Dated, signed and delivered in open court at Meru this 20th day of March 2018

F. GIKONYO

JUDGE

In the presence of:

Applicant – present

Cecilia – absent

Petitioner - absent

F. GIKONYO

JUDGE