



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

SUCCESSION CAUSE NO. 67 OF 2009

SUSAN MUKOKIRUJA JOSEPH.....PETITIONER

-VS-

SIMEON KIREAMIRAA.....APPLICANT

RULING

[1] Before me is Summons for Revocation /Annulment of Grant expressed to be brought under Section 76 of the Law of Succession Act CAP 160, Rule 44 (1) of the Probate and Administration Rules and Section 128 of Registered Land Act CAP 300 of the Laws of Kenya. In the application, the Applicant seeks the following orders:

1.spent

2. THAT an order of inhibition do issue inhibiting registration of any dealings over L.R NO. Kiirua/Ruiri/1754 which forms a part of the deceased estate, pending inter partes hearing of the application.

3. THAT an order of inhibition do issue inhibiting registration of any dealings over L.R NO Kiirua/ Ruiri 1754 which forms a part of the deceased estate pending the hearing and determination of this cause.

4. THAT the grant of letters of administration issued to Susan Mukokiruja on 14th May 2009 and confirmed on 3rd September 2009 be revoked and or annulled.

5. THAT the Petitioner be condemned to pay costs of this summons.

[2] The gist of the application is inter alia that the proceedings to obtain the Grant were defective in substance; the Grant was obtained fraudulently; and the Grant was obtained by means of an untrue allegation of fact essential in point of law to justify the Grant.

[3] The Applicant made the following averments and arguments In support of the above grounds: That the Petitioner:-

(a) Did not seek the consent of all other beneficiaries

(b) Left out most beneficiaries especially the deceased's children including the Applicant.

(c) Failed to disclose all the properties comprising the estate of the deceased and disclosed only one, to wit; Kiirua/Ruiri/1754. He identified KIIRUA/RUIRI/1753 as one such property that was omitted.

(d) Transferred Kiirua/Ruiri/1754 to herself yet it did not belong her but her father M' Karia M' Arachi and Zachary Kathure as per the deceased's wishes.

[4] In the submissions filed pursuant to directions issued on 14th June 2016, the Applicant argued the above matters support that the Petitioner was guilty of material non-disclosure of fact. She also obtained the grant through fraud and concealment of material facts such as that the Applicant was a son to the deceased and that she was a granddaughter to the deceased. She did not also rank in priority to the other dependants. He referred the court to the Petition for Grant Forms P & A and Summons for Confirmation of Grant to show these omissions. He stated that the Petitioner is not fit to administer the estate. On the basis of those reasons, the Applicant sought revocation of the grant herein.

Petitioner: this was gift inter vivos

[5] The Petitioner opposed the application and filed a Replying Affidavit filed in court on 30th July 2010, wherein she deposed inter alia:-

- (a) That the deceased was her grandfather and the Applicant's father respectively.
- (b) That during the deceased's lifetime he bequeathed L.R NO. Kiiirua/Ruiri/1754 to and gave her possession thereof. And from 1988 she has resided on the said land
- (c) That all other dependants and beneficiaries of the estate of the deceased were also given their parcels of land prior to the death of the deceased and transfers thereof were effected in their favour.

[6] The Petitioner also submitted in support of her position. She urged that there was adequate notice given and that beneficiaries gave their consent to the Confirmation of Grant voluntary and un-coerced. The Petitioner asserted that she had, in her Replying Affidavit clearly and truthfully disclosed the facts about this cause- the said facts have not been rebutted by the Applicant. She argued that she was the lawful beneficiary of L.R NO. Kiiirua.Ruiri/1754 having been in possession, use and occupation since 1988 having been gifted the same by the deceased; she had extensively developed it.

DETERMINATION

[7] This is an application for revocation of grant under Section 76 of the Law of Succession Act CAP 160 of the Laws of Kenya which provides 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.**

[8] Applying the test to the arguments I have heard, it is apparent that I should ask the following questions:-

- (a) Whether the proceedings to obtain the grant were defective in substance; or**
- (b) Whether 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) Whether 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**

[9] The Applicant put forth two major arguments: that the Petitioner did not seek the consent of all beneficiaries; and omitted some beneficiaries of the estate including the Applicant. The Applicant is a son of the deceased and the Petitioner is a granddaughter of the deceased. In law, the Applicant would rank in priority to the Petitioner. Thus, his consent for the Petitioner to apply for grant of representation was necessary. A careful perusal of the affidavit in support of the Petition and the affidavit in support of the Summons for Confirmation of Grant of Administration intestate clearly shows that the Applicant was not listed as a beneficiary of the estate. Quick scan of the Consent to Confirmation of Grant also show that the Applicant did not give his consent as required. Similarly, no provision has been made for the Applicant in the Certificate of Confirmation of Grant dated 4th September 2009. I note that, although, on 3rd September, 2009 when the application for Confirmation of Grant came up for hearing before Emukule J, Ms Nelima for the Petitioner intimated to court that

all the beneficiaries were present, there is nothing to show that the Applicant was present. Perhaps she meant all the beneficiaries that were named in the application; and notably, the Applicant was not one of them. What does the law say about such omissions?

[10] I am content to 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 that:-

“A grant obtained on the strength of false claims, without obtaining the consent of persons who had prior right to the grant and on the basis of facts concealed from the court, is liable to revocation.”

In the circumstances of this case, I come to the conclusion that the **grant herein was obtained on the strength of false claims, without the consent of persons who had prior right to the grant and on the basis of facts concealed from the court. It is, therefore, a perfect candidate for revocation without much ado. In the upshot, I revoke the grant issued herein. I also order an inhibition to be registered upon L.R NO Kiirua/Ruiru/1754.** But, the Petitioner will continue to live on the said land until this case is finalized. You will notice that I have avoided discussing some issues which have been raised, for instance, the alleged gift *inter vivos* and alleged failed exchange of lands herein; I reckon these are the substantial matters of the law at the heart of the controversy herein. In order to resolve them quickly, I direct parties to agree within 14 days of today on the persons to be appointed as administrators of the estate which failing I will exercise my final discretion under section 66 of the Law of Succession Act. 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 29th day of May, 2018

F. GIKONYO

JUDGE

In the presence of:

Mr. Muthamia advocate for Mr. Rimita advocate for petitioner

Mr. Kariuki advocate for applicant –absent

F. GIKONYO

JUDGE