REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

MISCELLANEOUS APPLICATION NO. 56 OF 1996

(IN THE MATTER OF THE ESTATE OF NJUGUNA CHEGE (DECEASED))

MWANGI NJOROGE MWANGI ..... APPLICANT

-VERSUS-

CHEGE NJUGUNA ..... RESPONDENT

RULING

The grant of letters of administration of the estate of the late Njuguna Chege who died intestate on 4th November, 1991 was made to one Muchiri Chege Kabugi; it was confirmed on 15th November, 1995.

Subsequently, the administrator transferred the estate apparently on the strength of the confirmed grant. However, on 22nd January, 2010 the grant was revoked upon a successful application by the respondent.

Following the revocation order, the respondent made a further application to have the original title revert to the deceased, now that the grant on whose basis the deceased's estate was transmitted had been revoked and/or annulled. That application was heard and allowed on 28th October, 2015. Consequently, all the subdivisions and registrations out of parcel No. Loc2/Mairi/73 which is the only asset that comprised the deceased's estate were cancelled and the estate reverted to the deceased's name pending the hearing and determination of the succession cause for administration of the estate that is now pending at Murang'a Chief Magistrates' Court as Succession Cause No. 130 of 1995.

By a summons general dated 29th March, 2016 the applicant sought to have the orders made by this court on 22nd January, 2010 and 28th October, 2015 respectively reviewed and set aside. He also sought to have stay of execution of the latter order. This prayer is obviously overtaken by events because by the applicant's own admission in the affidavit in support of the summons, the titles have been cancelled.

The applicant has sworn that he is not aware of what transpired in this cause since the year 2007 when he last received an invitation to fix a hearing date. In a nutshell, his case is that he is not aware of the proceedings to revoke the grant and cancellation of the titles. According to him, the orders against him and the registered owners of the deceased's estate who are said to be fifteen in total particularly, the order cancelling their registration as owners of respective parcels of land ought not to have been made without giving them a hearing.

The respondent opposed the application and filed grounds of objection to that effect. He urged that once the grant was revoked the titles were as good as cancelled and the application to cancel them was merely meant to direct the registrar of lands to effect the order of revocation. He also urged that if the applicant or any other of the alleged fifteen persons alleged to have a claim on the deceased's estate, they can ventilate such claim in the pending succession cause. In any event, so the respondent has argued, once a grant has been revoked, it cannot be reinstated; only a fresh one can be issued.

The record shows that when the summons for revocation of grant came up for hearing on 30th November, 2009, the court noted that it was satisfied that the respondent in that summons was duly served. His name was even called out but there was no response. The court therefore proceeded ex parte and as noted allowed the summons.

Similarly, when the application for cancellation of title and reversion of the estate into the deceased's name came up for hearing, the applicant in this summons did not appear. I noted that there was an affidavit of service on record showing that both the summons and the hearing notice had been served and neither the applicant nor his counsel had not only failed to appear but also that no response whatsoever had been filed in opposition to the respondent's summons.

As much as the applicant has in effect alleged that affidavits of service in respect of the two applications and the hearing notices are false, no application was made to summon the process servers to cross-examine them on their respective affidavits. The allegation that he was not served is thus hollow.

Secondly, the first order sought to be reviewed was made way back in January, 2010 yet the application for its review was made in 2016, six years down the line. I do not accept the argument that the applicant was oblivious of the order revoking the grant for all this while. I should think having been made aware of the summons for revocation of grant and having filed a replying affidavit to the same, the applicant should, if only out of curiosity, have taken some interest in the outcome of the summons. I do not believe that it had to take him six years to do this.

My assessment of the applicant is that he was only nudged into action when the deceased's estate was restored to the deceased's name in November, 2015. Even the he only filed his application more than three months after the order had been made.

I also note that although the applicant has alleged that there are various people affected by the orders granted by this honourable court, none of them has sworn any affidavit in support of his application. Not even the administrator of the deceased's estate has sworn any affidavit or filed any document in support of the applicant.

I would agree with the respondent's counsel that whatever claim the applicant has in the deceased's estate can be determined either in the succession cause now pending before the magistrates' court or in a suit against the deceased's estate, as the case may be.

I must also add that once the grant was revoked, neither the applicant nor anybody else could proceed as if there still existed a valid grant; the nullification of the grant had the domino effect of nullifying any action taken, in this case the subdivision and transfer of the deceased's estate, on the strength of the nullified grant. Strictly speaking, the application for cancellation of the titles that were derived from the deceased's original estate need not have been made in order for those titles to be cancelled. If it was to be made, the order that was consequently made would have been only necessary for avoidance of doubt on the net effect of the order nullifying the grant and, if the land registrar needed any direction, to direct him on the specific action to take; otherwise the revocation of grant was, in itself sufficient.

For the reasons I have given, I am satisfied that the applicant's application is not merited and it is hereby dismissed with costs.

Dated, signed and delivered in open court this 21st September, 2018

Ngaah Jairus

JUDGE