



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

SUCCESSION CAUSE NO. 7 OF 2002

In The Matter Of The Estate Of M' Thurania M' Arimi (Deceased)

STEPHEN THURANIRA MUNGORI

FRANCIS K. M' IGWETA M' MUGAMBI

JAMES GATOBU KATHURIMA

REBECCA KANANA EDWARD

PETER MBUGUA NGUGI.....APPLICANTS

VERSUS

KATHUKU M' ANAMPIU.....PETITIONER

JUDGMENT

Revocation of grant

[1] By Summons for Revocation of Grant dated 29th October 2005, the Applicants sought the Revocation of Grant issued to the Petitioner on the grounds that;-

1. The said Grant was issued fraudulently by concealing from court that the deceased herein was known as M' Arimi M' Tuerandu and not M' Thurania M' Arimi;
2. The alleged deceased person M' Thurania M' M' Arimi is the same person known as Stephen Thurania Mungori (one of the Applicant's herein), who was the original owner of the suit land and was alive and not deceased as alleged and
3. Further that at the time of filing of this succession cause, Land Parcel No. Ntima/Igoki/300 had ceased to exist as it had been subdivided and transferred to the Applicants who were not parties in this succession cause.

[2] When the matter came up for hearing on 14th May 2014, the court directed that the Application be heard by way of *viva voce* evidence. DW1 was Stephen Thurania Mungori. His evidence was that he knew the Petitioner in 1978 as a tenant in his father's house one Mungori Mugwika (deceased). It was his further evidence that he was named after the deceased M' Thurania A' Arimi, which was his grandfather's name. He stated that when he had no identity card he was being called Thurania M' Arimi and when he became an adult, he obtained an identity card under the name of Stephen Thurania Mungori. His further evidence was that his late grandfather M' Arimi M' Thurania was never at any one time the owner of this land and that he had a case with the Petitioner who was claiming purchaser's interest from him and that he had never sold land to her and that neither his father nor grandfather had sold land to her. It was his further evidence that plot Ntima/Igoki/300 had land title numbers Ntima/Igoki 5256, 5757, 5758 and 5633 and that the Petitioner though on the land had no right to be on Ntima/Igoki lands. He adduced more evidence that from 1978, she had not been continuously on the land having left in 1980s after a court order and that she had only returned to the land recently at night and put up a timber house where she currently lived.

[3] DW2 was Francis K M' Igweta M' Mugambi. It was his evidence that he came to know DW1 in 1978 when he sold him ½ acre of plot Ntima/Igoki/300 and that they split the land in 1998 whereupon he got his title. It was his further evidence that green card in respect of Plot No. Ntima/Igoki 5633 was his and that the same was extracted from plot No. 300. It was his further evidence that he knew the petitioner when he got his title and that she was not in the land and that in Meru RMCC NO. 18 of 1980, they had sued her for eviction and that prior to 1980, she was a tenant on plot No. 300 and that she was evicted vide a court order in RMCC No 18 of 1980 and her houses demolished only

to return in the year 2006 by force. He claimed that he reported the matter to the police and subsequently filed eviction case No. CMCC NO. 183 of 2007 which was still pending in court.

Petitioner's case

[4] The Petitioner's case on the other hand was that the deceased had sold her land in a year she could not remember and that she had stayed on the suit land for many years and bred her children on that land. She testified that, although they had not reduced the agreement in writing, they had agreed with the deceased who even showed her the portion that he had sold to her. She stated that she filed this succession cause so that she could get title to her land. She said that she knew Stephen Thurania Mungori as a grandson of the deceased who lived on the suit property as well. She denied ever having any suit with him over the suit property. She further denied having been a tenant in 1978 as alleged by Stephen Mungori and insisted that she had purchased the land, thus, she had a right to be on the suit property.

Submissions

[5] After close of the Petitioner's case, the court directed the objector to file and serve his submissions within 30 days. And the Petitioner was directed to file and serve submissions within 30 days of service. The cause was scheduled for mention on 24th July 2018 to confirm compliance with these directions. Only the objector complied. The Petitioner had not filed her submissions as directed. Instead, she requested for 21 days to do so. Despite having been given ample time to file submissions, the Petitioner had not done so as at the time of writing this ruling.

Objector's submissions

[6] Briefly, it was submitted for the objector that the Petitioner had commenced these proceedings in her capacity not as a direct heir of the deceased but as a purchaser. She filed these proceedings clandestinely without involvement of persons directly entitled to the estate. On 8th April 2003, the Grant was confirmed in the name of the Petitioner but when it was taken for implementation, it was discovered that the estate LR Ntima/Igoki/300 was none existent. It was further submitted for the objectors that this cause was commenced in the year 2002 and that it was evident from the green card that the register in respect of LR Ntima/Igoki/300 was opened on 8th January 1970 in the name of Thurania M' Arimi and that on 13th October 1978, the land was registered in the name of Francis K M' Igweta M' Mugambi and Stephen Thurania Mungori alias M' Thurania M' Arimi as proprietors in common with equal shares and that on 22nd January 1998, the title was partitioned by the proprietors creating new numbers namely Ntima/Igoki/5633 and 5634. Further, as at 2002, the alleged estate Ntima/Igoki/300 was obsolete.

ANALYSIS AND DETERMINATION

[7] The evidence by DW1 and DW2 and this was confirmed by the Petitioner is that the Petitioner was not related to them or the deceased. She claimed to have filed these proceedings as a purchaser. Evidence that she was a mere tenant of their father will not be discussed at this juncture to avoid prejudice to any of the parties. Of significance is that the Petitioner's interest was that of a purchaser and does not rank in priority to the beneficiaries of the estate. See section 66 of the Law of Succession Act below:-

Preference to be given to certain persons to administer where deceased died intestate

When a deceased has died intestate, the court shall, save as otherwise expressly provided, have a final discretion as to the person or persons to whom a grant of letters of administration shall, in the best interests of all concerned, be made, but shall, without prejudice to that discretion, accept as a general guide the following order of preference—

- a. surviving spouse or spouses, with or without association of other beneficiaries;***
- b. other beneficiaries entitled on intestacy, with priority according to their respective beneficial interests as provided by Part V;***
- c. the Public Trustee; and***
- d. creditors***

[8] In my view, such person ought to have first sought for citation to be issued to the heirs of the deceased to take or refuse to take out grant of representation of the estate of the deceased. See PAERT VI of the Probate and Administration Rules and specifically rule 22 thereof:

22. Citation to accept or refuse or to take a grant

(1) A citation may be issued at the instance of any person who would himself be entitled to a grant in the event of the person cited renouncing his right thereto.

[9] The procedure for citation is deliberately tailored to allow other persons to apply for grant of representation without prejudicing the right of persons with priority or in equality in applying for grant of representation. Apparently, citations are issued where the person or persons with priority or in equality in applying for grant of representation have refused to apply for grant. Citation also gives notice to the persons entitled to apply for grant to signify whether he or she will take or refuse grant of representation to the estate of the deceased. By this procedure, the noble requirement of notice to and or consent of persons entitled to apply grant is satisfied. And, surely, unscrupulous persons will be kept away from estates of deceased persons. Therefore, as there is no evidence that the Petitioner followed the right procedure or involved or sought or obtained consent of the beneficiaries of the estate in applying for grant of representation, the proceeding was tainted ab

initio. See the decision in SAMUEL WAFULA WASIKE -vs- HUDSON SIMIYU WAFULA CA NO.161 OF 1993 (Kwach, Omolo and Tunoi JJA) 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.”

[10] Applying the threshold provided in Section 76 of the Law of Succession Act CAP 160 of the Laws of Kenya this grant is a perfect candidate for revocation. I accordingly, revoke the grant.

[11] This being a succession cause I will make no order as to costs.

Dated, signed and delivered in open court at Meru this 30th day of October 2018

F. GIKONYO

JUDGE

In presence of Muthomi for petitioner

Mungai holding brief for Mukua for objector

F. GIKONYO

JUDGE