



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KERUGOYA

SUCCESSION CAUSE NO. 454 OF 2014

IN THE MATTER OF THE ESTATE OF LEONARD MARINGA MUNYI ...DECEASED

FRANCIS KINYUA MARINGA.....1ST APPLICANT

SERWASIO MURIUKI MARINGA.....2ND APPLICANT

VERSUS

LYDIA WANJIKU MARINGA.....RESPONDENT

AND

CHRISTINE WANJIRU MARINGA

HELLEN WANGECHI

MARY WAMBUI MUTONYI

ALICE WAMBURA MARINGA

NANCY WANGU MARINGA

AGATA KARIUKO MARINGA

SERAPHINE WARUI MARINGA.....INTERESTED PARTIES

RULING

This matter relates to the estate of Leonard Maringa Munyi (deceased).

Grant of Letters of Administration of the estate of Leonard Maringa Munyi (deceased) was issued to Lydia Wanjiru Maringa and confirmed on 15/09/2016. The deceased properties **Kabare/Nyangati/1882, 1885, 1889, 1892 and 3193** were to be registered jointly among his eight dependants.

The applicants have filed an application dated 12/10/2017 seeking revocation of the grant.

It is based on the ground that the grant was obtained fraudulently by making of a false statement or by concealment from court of something material to the case. That the grant was obtained by means of untrue allegation of a fact essential in a point of law to justify the grant notwithstanding that the allegation was made in ignorant or in advatently.

In the alternative the applicant seeks review of the certificate of the confirmation of grant issued on 15/9/16 by having land parcels No. Kabare/Nyangati/1882 and Kabare/Nyangati/3193 removed from the list of properties to be distributed and the register of the parcels at the Lands Office be adjusted for the two parcels to revert to the name of Leonard Mariga Munyi the deceased.

The applicants' case.

As per the documents attached, they claimed that the two parcels of land had been transferred to them by way of gift from the deceased and all requisite consents had been obtained in 2013 before the deceased passed away in 2014. Therefore, the two parcels of land should not have formed part of estate of the deceased. They have annexed the application for consent of Land Control Board, letter of consent by the Land Control Board, transfer forms, green cards and certificate of official search showing that at the time grant was confirmed the properties were not in the name of the deceased, Annexures SMM 1-6.

Respondents' case

They have annexed decree dated 20/07/2017 under **E.L.C No. 185 of 2016** where the court declared that the two parcels of land belonged to the deceased's estate and are to be administered according to the confirmation of grant issued on 16/09/2015. In addition, it ordered that the Land registrar to cancel registration of the two parcels of land and the same to revert back to the deceased.

The respondent relies on the case of ***Alice Chemtai Too –v- Nickson Kipkurui Korir A.G & Another***. The authority is persuasive and is distinguishable from the facts of this case as the applicant stated that they had received the properties as gifts inter vivos and deceased had signed all the transactions to effect the transfers before his demise, a fact which was concealed from the court.

The Interested parties did not file any papers apart from the 1st Interested party Christine Wanjiru Maringa who filed a statement on 30/4/18 supporting the applicants case. The parties herein are brothers and sisters and are the children of the deceased who died on 28/12/2013. The 1st interested party stated that the applicants were given the parcels of land in dispute in his lifetime and they did not form part of the estate.

In response to the respondents' case. The applicants applied for setting aside of the said ex-parte orders which was granted on 23/02/2018. Therefore they seek the two parcels to revert back to the deceased so that **E.L.C No. 185 of 2016** can determine whether their registration was proper, legal and procedural.

The issue which arise is the revocation of grant. **Section 76 of the Law of Succession Act** makes provision of factors which may lead to the revocation of grant. The section provides:

“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.

For the grant to be revoked, the party must prove that the proceedings were defective in substance, were obtained fraudulently or through concealment from court of something material to the case or by means of making untrue allegation of fact which essential in point of law justifying the making of grant.

It would seem that there is a parallel suit in E.L.C Court where the parcels in this case Kabare/Nyangate/1882 and 3193 which are subject matters in the cause are also subject matters in E.L.C case. The court (E.L.C) had ordered that the properties revert back to the estate. The E.L.C Court is to determine whether the registration was proper. From the documents filed, it is clear that the respondent put the cat before the horse by moving the court to confirm the grant including properties which were not in the name of the deceased then moving to ELC ex parte to cancel the title deeds. This was an abuse of court process. It would seem even in the ELC court the respondent did not disclose material facts that the properties in dispute were not in the name of the deceased at the time the grant was confirmed. **Section 47 Law of Succession Act** provides:

“The High Court shall have jurisdiction to entertain any application and determine any dispute under this Act and to pronounce such decrees and make such orders therein as may be expedient:

Provided that the High Court may for the purpose of this section be represented by resident magistrates appointed by the Chief

Justice.” It is couched in mandatory terms. High Court heard jurisdiction to determine the dispute.

The applicant has shown that the respondent was aware that the two parcels had been transferred to the applicants at the time the grant was confirmed as she had lodged caution on titles. She concealed material facts from the court that the properties were not in the name of the deceased at the time the grant was confirmed. **Section 2 Law of Succession Act** defines “*estate*” to mean the free property of a deceased person. The grant is not capable of taking effect as the parcels are not in the name of the deceased. The properties in dispute were not available for distribution at the time the grant was confirmed. The Law of Succession Act recognizes gifts made by deceased person during his lifetime. It is provided under **Section 42 Law of Succession Act:**

Previous benefits to be brought into account

Where –

(a) an intestate has, during his lifetime or by will, paid, given or settled any property to or for the benefit of a child, grandchild or house; or

(b) property has been appointed or awarded to any child or grandchild under the provisions of section 26 or section 35 of this Act, that property shall be taken into account in determining the share of the net intestate estate finally accruing to the child, grandchild or house.

The applicants have shown the court that the deceased had given them the properties in dispute and signed all the necessary documents to transfer them. The process was lawful and should have been disclosed to the court at the time of the confirmation of grant.

Failure to disclose to court matters which were material to the making grant is sufficient ground for this court to order the grant to be revoked. The conduct of the respondent shows that she deliberately concealed from the court something material to the case and by means of untrue allegation of a fact essential in point of law to justify the grant. A grant obtained through such means maybe revoked or annulled at any stage. Under **Section 80 (2) of the Law of Succession Act.** It is provided –

“A grant of Letters of Administration with or without the will annexed shall take effect only as from the date of such grant.”

The grant could therefore not be perfected in retrospect by obtaining orders from the E.L.C Court. I find that the grant cannot stand. High Court had jurisdiction to determine whether the properties formed the estate of deceased.

I find that the application has merits. I order that the certificate of grant issued on 15/9/2016 be revoked.

Costs to the applicant.

Dated at Kerugoya this 22nd Day of November 2018.

L. W. GITARI

JUDGE