



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MURANG'A

SUCCESSION CAUSE NO 376 OF 2013

IN THE MATTER OF THE ESTATE OF WANYAGA GICHUKI - DECEASED

1. DOUGLAS WANYAGA GICHUKI

2. SUSAN NYAMBURA GIKONYO.....APPLICANTS

VERSUS

GICHUKI K. WANYAGA.....RESPONDENT

R U L I N G

1. The Applicants herein, **Susan Nyambura Gikonyo** and **Douglas Wanyaga Gichuki** applied by **summons dated 08/03/2013** for revocation of grant of letters of administration intestate in respect to the estate of **Wanyaga Gichuki, Deceased** made on 28/03/2012 in **Kangema PM Succession Cause No.47 of 2010**. The grant was confirmed and a certificate of confirmation of grant dated 28/03/2012 issued. The summons was amended on 13/03/2013 to correct the name of the 1st Applicant from **Susan Nyambura Kinyoko** to **Susan Nyambura Gikonyo**.

2. In the supporting affidavit filed with the summons the Applicants stated that they are related to the Deceased in that the 1st Applicant's husband (Gikonyo Gichuki, who is deceased) and the 2nd Applicant were step-brothers of the Deceased; that they (Applicants) have been in occupation of land parcel **LR LOC 14/KAIRO/708** (which constitutes the Deceased's estate), and that all the family members have been buried there; that the Applicants were left out of the succession proceedings and thereby effectively disinherited; and that the said land has been sold and transferred to a third party.

3. The 1st Respondent, **Gichuki K. Wanyaga**, who was the administrator of the Deceased's estate, filed a replying affidavit on 24/04/2013. He deponed that he was one of the children of the Deceased, while the 1st Applicant is his uncle's wife and the 2nd Applicant is his paternal uncle from another house; that the land parcel LR LOC 14/KAIRO/708 was initially registered in the Deceased's name before the 2nd Applicant falsely and fraudulently caused his name to be entered in the register in place of the Deceased's name by pretending that the Wanyaga Gichuki (the Deceased) in the register was also known as Douglas Wanyaga Gichuki (actually 2nd Applicant) and thus causing the Land Registrar, Murang'a to "correct" the name; that after the Deceased discovered the aforesaid fraud by the 2nd Applicant he (Deceased) instituted **Murang'a SPM CC No.126 of 1995** against him (2nd Applicant) and obtained a decree directing cancellation of the name of the 2nd Applicant and restoring the Deceased's name as proprietor of LR LOC 14/KAIRO/708; that further, in 2005 the Deceased obtained vide **Kangema LDT Cause No 17 of 2005** for the eviction of the 2nd Applicant and the son of the 1st Applicant, Peter Gichuki Gikonyo, an order for their eviction from the Deceased's parcel of land, LR LOC 14/KAIRO/708; that the 2nd

Applicant's mother, Wothaya Gichuki, has her own land known as **LR LOC 14/KAIRO/707** which constitutes the 2nd Applicant's ancestral land; that the 1st Applicant in any event vacated the Deceased's parcel of land along with her son, Peter Gichuki Gikonyo, and they built their houses on 1st Applicant's land **LR LOC 14/KAIRO/716**; that only the 2nd Applicant has continued to unlawfully maintain a temporary structure on the Deceased's land; that the Applicants are not the Deceased's survivors and have no lawful claim to his estate; and that the grant sought to be revoked was lawfully and properly obtained and confirmed, and the Deceased's land was lawfully and properly sold to the 2nd Respondent which obtained a good title thereto.

4. The 1st Respondent also filed another replying affidavit on 10/12/2013. He deponed, inter alia, that the Applicants have no **locus standi** in matters relating to the Deceased's estate as they are not his survivors, and thus have no lawful claim to it in succession.

5. The Applicants do not appear to have filed any response to the 1st Respondent's replying affidavits.

6. On 10/07/2015 the Respondents filed a notice of preliminary objection, which is the subject of this ruling. The legal points taken are –

(i) That the Applicants not being the Deceased's survivors as children or otherwise, and the Deceased having been survived by his own widow and children, they could not have any **locus standi** in succession proceedings in respect to his estate.

(ii) That the Applicants have no lawful claim in succession to the Deceased's estate.

(iii) That whatever claim the Applicants may have in the Deceased's parcel of land L.R.LOC.14/KAIRO/708 cannot be in these succession proceedings.

(iv) That in any event the issue of ownership of land parcel LR LOC 14/KAIRO/708 between the Deceased and the 2nd Applicant was settled in Murang'a SPM CC No126 of 1995 and the Deceased confirmed to be the proprietor thereof.

(v) That a competent court of law ordered the eviction of the 2nd Applicant and another person from the Deceased's land in Kangema LDT Case No.17 of 2005.

(vi) That the summons for revocation will be an exercise in futility as the Deceased's parcel of land LR LOC 14/KAIRO/708 was lawfully transferred to the 2nd Respondent, whose title thereto is indefeasible by virtue of section 93 of the Law of Succession Act.

7. At the hearing of the preliminary objection the 1st Applicant was not present. I have considered the submissions of the learned counsel for the Respondents as well as those of the 2nd Applicant.

8. The following facts which form the basis of the preliminary objection are not in dispute –

(i) The Deceased's estate comprised parcel of land LR LOC 14/KAIRO/708.

(ii) At one point during the life-time of the Deceased the 2nd Applicant had fraudulently succeeded in having the name of the proprietor of the land "corrected" to reflect his own name.

(iii) The Deceased upon discovery of the fraud filed suit vide Murang'a SPM CC No 126 of 1995 which by decree reversed the 2nd Applicant's fraudulent action and restored the land unto the Deceased's name.

(iv) The 1st Applicant moved out of the Deceased's land.

(v) The Deceased subsequently obtained an order for the eviction of the 2nd Applicant and a son of the 1st Applicant from the Deceased's land.

(vi) The Deceased then died before enforcing that order against the 2nd Applicant.

(vii) The Applicants are not the Deceased's survivors; the Deceased was survived by a widow and children (including the 1st Respondent).

9. The Applicants not being the Deceased's children (the Deceased was survived by his own widow and children) they would have no standing in law in respect to the administration of his estate. Their claim in the Deceased's land appears to be based on trusts and adverse possession. Those are not claims that can be properly adjudicated in succession proceedings which are limited in scope and purpose. Their claim lie in civil proceedings before another court.

10. In any case, the issue of ownership of land parcel LR LOC/14/KAIRO/708 as between the Deceased and the 2nd Applicant was adjudicated upon by a competent court of law vide Murang'a SPM CC No 126 of 1995. The Deceased was decreed to be the owner of the land. It is also to be noted that the Deceased obtained an order for the eviction of the 2nd Applicant from the land vide Kangema LDT Case No 17 of 2005. The 1st Applicant is no longer in the land and appeared disinterested in the present proceedings.

11. In these circumstances, I find that allowing the summons for revocation of grant to proceed to hearing would be an exercise in futility. I will in the event uphold the preliminary objection. The summons for revocation of grant is hereby struck out with costs to the Respondents. It is so orders.

DATED AND SIGNED AT MURANG'A THIS 23RD DAY OF FEBRUARY 2017

H P G WAWERU

JUDGE

DELIVERED AT MURANG'A THIS 24TH DAY OF FEBRUARY 2017