



IN THE HIGH COURT OF KENYA AT MURANG'A

SUCCESSION CAUSE NO 382 OF 2015

IN THE MATTER OF THE ESTATE OF MAINA HARUN KAMBOGO DECEASED

MWANGI KAINGI (ALIAS NDEGWA KAINGI).....APPLICANT

VERSUS

JEDIDAH NJERI MAINA.....RESPONDENT

R U L I N G

1. The Applicant herein, **Mwangi Kaingi** (alias **Ndegwa Kaingi**) applied by **summons dated 03/10/2014** for revocation of the grant issued and confirmed in **Murang'a SRM Succession Cause No 140 of 1990** in respect to the estate of the Deceased herein, **Maina Harun Kambogo**. The grounds for the application appearing on the face thereof are the usual statutory ones set out in **section 76** of the **Law of Succession Act, Cap 160**.

2. In his supporting affidavit annexed to the summons the Applicant has stated, inter alia –

(a) That he is a brother of the Deceased.

(b) That the proceedings in **Murang'a PM Succession Cause No 140 of 1990** were defective in substance in that he was never cited therein notwithstanding that he had a legitimate interest in the Deceased's estate.

(c) That the confirmed grant completely disinherited him.

(d) That the land comprising the Deceased's estate belonged to the Deceased and the Applicant jointly as it was bequeathed to them both by their father.

(e) That subsequently and fraudulently the Deceased had the land, LR.LOC 11/MARAGI/2048, registered in his own name.

3. The Administrator/Respondent, **Jedidah Njeri Maina**, opposed the application by her **replying affidavit filed on 17/08/2015**. In the affidavit she, *inter alia*, annexed documents giving a history of the succession cause before the lower court and other litigation involving the same parcel of land and annexed various documents.

4. The Applicant filed a supplementary affidavit on 25/11/2015 in response to the replying affidavit.

5. By a **summons dated 25/08/2016** the Respondent applied for an order to strike out the summons dated 03/10/2014 for revocation of grant with costs. That application is the subject of this ruling. The application is supported by the Respondent's replying affidavit filed in response to the summons for revocation. The grounds for that application appearing as the face thereof are –

(a) That the application is an abuse of the process of the court in that the Applicant participated fully in **Murang'a SRM Succession Cause No140 of 1990**, and it is false for him to claim otherwise.

(b) That the Applicant's claim to land parcel LR LOC 11/Maragi/2048 was litigated fully between the Applicant and the Administrator, and it would be absurd to reopen the litigation through this present succession cause.

(c) That the application is grounded upon a deliberately false affidavit.

(d) That it is in the interest of justice to bring this litigation to an end.

6. The Applicant opposed that application by his replying affidavit filed on 30/01/2017. That affidavit is more or less a reproduction of the Applicant's affidavit sworn in support of his summons for revocation of grant.

7. I have considered the submissions of the learned counsel for the Administrator and those of the Applicant who appeared in person. The following facts are not in dispute –

(a) The Applicant was not a brother of the Deceased but rather his first cousin as it was their fathers who were brothers.

(b) The Applicant fully participated in the proceedings in **Murang'a PM Succession Cause No 140 of 1990** where he had filed an objection to issuance of grant to the Administrator and subsequently filed an affidavit of protest in opposition to the summons to confirm the grant made to the Administrator.

(c) After the grant was confirmed the Administrator sued the Applicant vide **Murang'a CMCC No 151 of 2005** seeking removal of a caution he had lodged against the title of L.R. LOC 11/Maragi/2048 as well as his eviction. He was represented in those proceedings by counsel. A decree of eviction was issued against him on 20/05/2006.

(d) The Applicant never appealed against the decree for his eviction from L.R.LOC 11/Maragi/2024 in Murang'a CMCC No.151 of 2005.

(e) The Applicant had also appealed against the judgement in Murang'a SRM Succession Cause No 140 of 1990. This was vide **Nairobi HC Civil Appeal No 222 of 2002**. Judgment in that appeal was delivered on 15/05/2003. The appeal was dismissed.

8. There are documents annexed to both the Applicant's and the Administrator's affidavits bringing out fully all the above facts. To his credit the Applicant did not deny all these facts when they were put to him in the present application. His feeble response was that he was "unrepresented properly" by his advocates in **Murang'a SRM Succession Cause No 140 of 1990**, **Nairobi HC Civil Appeal No 222 of 2002** and in **Murang'a CMCC No 151 of 2005**.

10. Litigation must come to an end! The Applicant has admitted that he participated in the succession cause that gave rise to the grant he now seeks to have revoked. He appealed against the judgment by which that grant was confirmed. His appeal was dismissed. He was sued for eviction from the parcel of land in issue. A decree for his eviction was issued. He never appealed against it. The issue of ownership of that parcel of land, which constitutes the estate of the Deceased herein, was thereby settled, and it cannot be re-opened, and not in succession proceedings, where his claim which is based on trusts cannot be properly litigated anyway!

11. In all these circumstances, I have no hesitation at all in allowing the Administrator's summons dated 25/08/2016. The Applicant's summons dated 03/10/2014 is hereby struck out with costs to the Administrator/Respondent who shall also have the costs of this present application. It is so ordered.

DATED AND SIGNED AT MURANG'A THIS 29TH DAY OF JUNE 2017

H P G WAWERU

JUDGE

DELIVERED AT MURANG'A THIS 30TH DAY OF JUNE 2017