



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII

SUCCESSION CAUSE NO. 391 OF 2008

IN THE MATTER OF THE ESTATE OF JAMES NJIINE NDIGIRIGI(DECEASED)

AND

IN THE MATTER OF THE LAW OF SUCCESSION ACT, CHAPTER 160, LAWS OF KENYA

AND

IN THE MATTER OF SUMMONS FOR REVOCATION OF GRANT

BETWEEN

FLORENCE MUMBI NJIINE.....PETITIONER

VERSUS

KEFA OKETCHI MUINDE.....OBJECTOR

JUDGMENT

1. On 20th June 2012 the objector herein, **Kefa Oketchi Muinde**, filed summons for Revocation of Grant application wherein he sought the following orders:-

a. Spent

b. Spent

c. That the grant of Letters of Administration issued to Florence Mumbi Njine on the 9th November 2009, by this Honourable Court be revoked/annulled.

d. That the Honourable court be pleased to rectify the Register in LR. NO. BUKIRA/BUHIRIMONONO/2022 to read the names of James Njine Ndigirigi(hereinafter also known as deceased)

e. Spent

f. That this Honourable Court be pleased to allow the objector or any of the beneficiaries to the estate of deceased to be the co- administrators.

g. That Costs of the Application be in the cause.

2. The application was supported by the objector's affidavit dated 19th July 2012 in which he avers that the petitioner commenced succession proceedings and obtained a Grant of Administration without full disclosure and hence she concealed material facts regarding the estate of the deceased. He contends that the LR. No. BUKIRA/ BUHIRIMONONO/2022 (hereinafter "the suit land") was irregularly obtained by the deceased in terms of registration as he (objector) had been residing on the suit land for over 20 years. He further contends that the deceased was a witness in a Criminal Case in Migori being MIGORI PMCCR No. 777 of 2044 in which one Simeon Robi Maroa was charged for fraudulent subdivision and transfer of LR No. BUKIRA/BUHIRIMONONO/273.

3. He further states that at the time the petitioner filed the instant succession proceedings, she did not name all the beneficiaries of the deceased estate in Form P&A 5 as required under the Law and neither did she obtain the consent of the objector and other beneficiaries before the confirmation of the grant.

4. The applicant's case was that he has been residing on the suit land for a long period of time and therefore he is entitled to the land by way of prescription which could have qualified him to be included in the Form P&A5 as a beneficiary. It was therefore the objector's case that it is only fair and just that the grant issued to the petitioner be revoked to enable him obtain the beneficial share out of the Estate.

5. The application was opposed by the petitioner herein, Florence Mumbi Njiine, through her replying affidavit dated 8th June 2015 wherein she deposes that the deceased was survived by only one widow and six children. She attached a letter of introduction from the area chief which was marked as "FMM1". She further deposes that the details/names of all the beneficiaries of the estate of the deceased were captured in Form P & A 5. She attached a copy of the said form which was marked as "FMN 2." She further states that other than the statement of the names/details of the beneficiaries in the aforesaid forms, the beneficiaries also executed a consent for the issuance of grant of letters of administration in her favour. She attached a copy of the said consent which was marked as "FMN 3".

6. It was the petitioner's case that a beneficiary of the estate of the deceased is statutorily defined and circumscribed and hence, a beneficiary of the estate of the deceased does not include one who seeks to challenge the propriety and validity of the acquisition of the free property of the deceased through allegations of fraud. She added that any person who seeks to impugn the propriety in respect of acquisition of the estate of the deceased can only do so through the filing of a civil suit and not otherwise.

7. It was thus the petitioner's case that that the objector has no *locus standi* to commence the summons for revocation of grant whatsoever and that the issues pertaining to fraud and adverse possession on which the objection was anchored cannot be ventilated in this court as it is not seized with the requisite jurisdiction.

8. On 10th June 2015, parties agreed to canvass the objection proceedings by way of viva voce evidence.

9. PW1, Esther Bosibori Minyongo, testified that sometime in 1972, she sold 1/2 an acre of her land to one Nyamosi Orwongo and that in the year 2002 she entered into another land sale agreement for a portion of land measuring 0.14 Ha with the objector. She stated that the objector planted bananas and built permanent structures on the said parcel of land. She added that she later moved from Isebania Area and relocated to Eldoret where she resides to date. She later discovered that one Simeon Robi Maroa had illegally transferred the entire land into his name without her consent. She however did not produce a sale agreement in support of the alleged sale of the land to the objector or to the said Nyamosi Orwongo.

10. PW2 was the objector herein, Kefa Oketchi Muinde. His testimony was that the petitioner took away the parcel of land which he had bought from one Nyamosi Orwongo. He stated that he had been staying on the land since he bought it and that the petitioner's husband secured registration over the said parcel of land illegally. He added that the petitioner did not disclose to all the material facts to the court when she filed the instant succession cause and hence he asked the court to nullify the grant issued to the petitioner.

11. The testimony of PW3, Joseph Chacha Nyamoriba, was that he accompanied Simeon Robi Marwa to the home of Esther Bosibori Minyonga (PW1) on his quest to buy land from PW1. He stated that later, he

saw Simeon Maroa Robi sub-dividing the land. This marked the close of the plaintiff's case.

12. DW1 was the petitioner herein, Florence Mumbi Njiine. She stated that she was the wife to the deceased who passed away 19th June 2008 and that the deceased was survived by 8 dependants as follows: -

- 1. Florence Mumbi Njiine**
- 2. Anne Wamuyu Njiine**
- 3. Benjamin Muthama Njiine (deceased)**
- 4. Julius Maina Ndigirigi**
- 5. Samuel Mwangi Ndigirigi**
- 6. Dominic Njoroge Ndigirigi**
- 7. Isaac Mureithi Ndigirigi**
- 8. John Kamau Ndigirigi.**

13. Her testimony was that the names of all the beneficiaries of the deceased's estate were included in Form P&A 5 at the time of filing the petition and she produced the said form in as an exhibit in court. She therefore maintained that the objector's claim that he was not included on the list of beneficiaries as wild and mischievous to the extent that he did not understand who constitutes a beneficiary of the estate of the deceased person.

14. Grace Kemunto Robi (DW2) testified that she was the widow of Simeon Robi Marwa whom she alleged was in possession of land which formed part of the deceased's estate. She stated that her late husband, Simeon Robi Maroa, was not related to the objector herein and therefore he (objector) could not purport to claim any interest over LR. NO. BUKIRA /BUHIRIMONONO/2022. This marked the close of the petitioner's case.

15. Advocates representing both parties then agreed to file written submissions which I have read and after considering the application for summons for revocation of grant, the replying affidavit by the petitioner, the oral evidence presented in court and the written submissions filed by each of the parties, I note that the main issue that presents itself for determination is whether the objector has made out a case to warrant the revocation of the grant issued to the petitioner herein.

16. The circumstances under which a grant of letters of administration, whether confirmed or not, can be revoked are provided for under Section 76 of the Law of Succession Act as follows: -

- 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 concealment from the court of something material to the case.**
- c. That the grant was obtained by means of 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 a**

longer period as the court had ordered or allowed or

ii. To proceed diligently with the administration of the estate.

iii. To produce to court within time prescribed any such inventory or account of administration as is required or has produced any such inventory or account which is false in any material particular.

e) That the grant has become useless and in operative through subsequent circumstance.

17. One of the reasons that the objector advanced for seeking a revocation of the grant was that he was not included in the succession cause filed by the petitioner. The petitioner, on her part, contended that the objector was not a beneficiary of the estate of the deceased and hence his participation or involvement in the succession case or in the obtaining grant of letters of administration was not required. Section 29 of the Succession Act Chapter 160 Laws of Kenya stipulates who a dependant is under the Law of Succession Act. The said section defines a dependant as follows: -

a. Wife or wives or former wife or wives and the children of the deceased, whether or not maintained by the deceased immediately prior to his death.

b. Such of the deceased parents, step parents, grandparents, grand children, step children, children whom the deceased had taken into his family as his own, brothers and sisters and half brothers and half sisters as were being maintained by the deceased immediately prior to the date of her death.

c. Where the deceased was a woman, her husband if he was being maintained by her immediately prior to the date of her death.

18. From the analysis of the evidence adduced before me, it is an undisputed fact that the objector is not a relative/dependant of the deceased herein. The objector stated that he bought land from one Nyamosi Orwongo and Esther Bosibori Minyonga. He, however, did not produce any sale agreement in support of the purchase of the deceased's LR. NO. BUKIRA /BUHIRIMONONO/2022, but instead produced an agreement in respect to a different parcel of land NO. BUKIRA /BUHIRIMONONO/273. The objector further produced a copy of the Green Card in respect to LR. NO. BUKIRA /BUHIRIMONONO/273 but this court notes that the green card does not indicate if the objector or the deceased were ever registered over it as its owner. It is my finding that the objector did not establish the nexus between LR. NO. BUKIRA /BUHIRIMONONO/273, which he claims he had purchased, and the suit land belonging to the estate of the deceased. In this regard, I find that the evidence contained in the said sale agreement had no bearing to the estate of the deceased and in any event, cannot form a basis for revocation of the grant.

19. Furthermore, the criminal proceedings in respect to MIGORI CRIMINAL CASE NO. 777 of 2004 that the objector alluded to indicate that Simeon Robi Maroa was not found guilty of any wrong doing. It is therefore my finding that, the evidence relating to the said criminal proceedings were of no relevance to this case.

20. In a nutshell, I find that the objector has not satisfied any of the conditions for revocation of grant as envisaged under Section 76 of the Law of Succession Act. He is neither a beneficiary nor a dependant to the deceased's estate. To my mind, the objector's claim that he had purchased the suit land, if true, is a claim that he should pursue by filing a civil suit in the Land and Environment Court which is the court that is properly vested with the jurisdiction to handle such claims.

21. From the foregoing findings and observations, I find that the objector's application lacked merit and the same is hereby dismissed with costs to the petitioner.

22. It is so ordered.

Dated, signed and delivered in open court this 21ST day of June, 2017

HON. W. A OKWANY

JUDGE

In the presence of:

Petitioner in person

Mr. Onserio for Nyambati for the objector

Omwoyo: court clerk