



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MURANG'A

SUCCESSION CAUSE NO 1135 OF 2013

(FORMERLY EMBU HC SUCCESSION CAUSE NO 72 OF 2007)

IN THE MATTER OF THE ESTATE OF GITU NGOORODECEASED

JANE WAITHIRA MACHARIA.....SUBSTITUTED ADMIN/APPLICANT

VERSUS

PETER IRUNGU MBOGA.....RESPONDENT

R U L I N G

1. On 28/03/2003 a grant of letters of administration intestate in respect of the estate of the Deceased herein, **Gitu Ngooro**, was issued to **Macharia Ngooro** vide **Murang'a SPM Succession Cause No 151 of 2002**. That grant was confirmed by an order entered on 17/10/2003 and a certificate of confirmation of grant dated 23/10/2003 issued.

2. By that certificate of confirmation the only asset of the Deceased's estate, land parcel **LOC 8/NGERERE-THOMBOTHO/317**, was to be shared as follows –

Macharia Ngooro Jointly to get 0.9 acres

Peter Irungu Mboga

Peter Irungu Mboga – To get 1 acre as sole proprietor.

Macharia Ngooro was the Administrator of the estate.

3. On 27/03/2007, the same Administrator, Macharia Ngooro, filed summons of the same date seeking revocation of the very same grant made and confirmed to him. He alleged in the grounds for the application on the face thereof that parties unknown to him “misrepresented themselves as the petitioner on the date of confirmation”; that he (the Administrator was informed that an agent of the Respondent, Peter Irungu Mboga, “misrepresented himself as the petitioner on the date of confirmation of grant”; that the Respondent “has misled and misrepresented himself in the petition as a relative to the deceased, an untrue fact; that “the sole reason of the misrepresentation and fraud was to land parcel LOC 8/NGERERE-THOMBOTHO/784 to be registered in the name of the Respondent alone and land parcel LOC.8/NGERERE-THOMBOTHO/783 to be registered jointly in the names of the respondent and the petitioner”; that the Respondent was not entitled to the same “and took advantage of the applicant's extreme old age and at times the applicant taking leave of his senses”; that the proceedings were defective in substance and were conducted fraudulently by making a false statement and concealing from the court material facts; and that the grant was obtained by means of an untrue allegation of fact essential in point

of law to justify the grant.

4. There is a supporting affidavit sworn by the Administrator/Applicant annexed to the application. I have read the same.
5. The Respondent filed a replying affidavit (sworn by himself) on 16/05/2007 to which he annexed various documents. I have read the affidavit and the annexed documents.
6. The summons for revocation of grant (which is the subject of this ruling) was originally filed at the High Court at Embu. It was transferred to this court by an order entered on 02/09/2013. The Administrator/Applicant subsequently died; by an order entered on 04/04/2014 one **Jane Waithira Macharia** was substituted in his place.
7. By an order also entered on 04/04/2014 the court directed that the summons for revocation be disposed of by way of written submissions upon the affidavits already on record. The Respondent filed his submissions on 05/06/2014 while the Administrator/Applicant filed his on 04/09/2014. The case was then fixed a number of times for highlighting of the written submissions. Eventually on 19/09/2017 the court was informed that the learned counsels did not wish to highlight after all. Ruling was then reserved for 03/11/2017 but could then not be prepared and delivered because of pressure of work. The delay is regretted.
8. I have considered the submissions filed for the parties. As already stated, I have also read the supporting and opposing affidavits.

What emerges is as follows –

- (a) The Administrator Macharia Ngooro was the Deceased's brother and his closest relative, apparently having died without spouse or issue.
- (b) The Administrator apparently did not have the wherewithal to file and prosecute a succession cause in respect to his brother's estate. He approached the Respondent Peter Irungu Mboga for necessary financing.
- (c) The two then agreed that the Administrator would sell to the Respondent one acre of land from the Deceased's parcel which the Administrator expected to come into. The consideration would be KShs 130,000/00 which would be paid partly in cash and partly in financing the succession cause that the Administrator wished to file. The sale agreement was reduced into writing and has been exhibited in the replying affidavit.
- (d) The Administrator then filed Murang'a SPM Succession Cause No 151 of 2002 in respect of his brother's estate. He prosecuted it to conclusion, no doubt with the assistance of the Respondent as per their agreement. A grant of letters of administration intestate was issued to the Administrator and subsequently confirmed and the Deceased's estate distributed as already seen.
- (e) The Administrator then turned round and complained to the police that the Respondent had stolen his land through fraud. The matter was investigated and the police found the complaint to be false.
- (f) The Administrator was then charged with the criminal offence of ***giving false information to a person employed in the public service*** contrary to **section 129(a)** of the ***Penal Code***. This was vide ***Murang'a SRM Criminal Case No.2790 of 2006***.
- (g) The Administrator was fully tried and convicted of the offence. Because of his advanced age and infirmity he was discharged under **section 35(1)** of the Penal Code and warned not to repeat the offence.

(h) It will be noted that the particulars of the offence of giving false information to a person employed in the public service that the Administrator stood charged and convicted of were as follows –

“On the 27th day of May 2006 at CID offices Murang’a, in Murang’a District within Central Province, informed No.35359 Police Constable Martin Nzeia Nyumu, a person employed in the Public Service, that one Peter Irungu Mboga had fraudulently obtained title numbers LOC.8/NGERERE-THOMBTHO/783 AND 784, which information he knew to be false, intending thereby to cause the said police constable Martin Nzeia Nyumu to arrest Peter Irungu Mboga, which the said police officer ought not to have done if the true state of facts respecting which such information was given had been known to him,”

(i) The Administrator thereafter filed the present summons for revocation of grant.

9. It is apparent to this court that by the present application the Administrator is trying to achieve what he was unable to achieve by falsely reporting against the Respondent to the police. His intention was to get out of the agreement or agreements that he entered into with the Respondent.

10. It is true however, that the sale agreement between him and the Respondent was in respect to one acre and not the entire parcel of land which was 1.9 acres. But he himself never disclosed to court in this application about his sale agreement with the Respondent in respect to the one acre. It was the Respondent who brought it to light in his replying affidavit.

11. It is not clear why the Administrator and the Respondent were registered as joint proprietors of LOC 8/NGERERE-THOMBOTHO/783 (0.9 acres) as the Respondent was buying only one acre (LOC 8/NGERERE-THOMBOTHO/784 - which was registered in his sole name). But it appears that both were originally registered as joint proprietors of the entire original parcel (LOC 8/NGERERE-THOMBOTHO/317). This, as the Respondent himself explained at paragraph 10 of his replying affidavit, was merely to protect their respective interests. After sub-division therefore, parcel LOC 8/NGERERE-THOMBOTHO/783 should have been registered in the Administrator’s sole name while LOC 8/NGERERE-THOMBOTHO/784 was registered in the Respondent’s name.

12. I note that in the replying affidavit the Respondent has not laid any claim to LOC 8/NGERERE-THOMBOTHO/783 (0.9 acres). There is no reason at all to keep it. He purchased from the Administrator only one acre. That one acre became LOC 8/NGERERE-THOMBOTHO/784 which was registered in his sole name.

13. In these circumstances, I will not grant the order sought to revoke the grant in ***Murang’a SPM Succession Cause No 151 of 2002***. But I will direct that the Certificate of Confirmation of Grant dated 23/10/2003 issued herein shall be rectified as follows –

(i) Macharia Ngooro shall get absolutely 0.9 acres in LOC 8/NGERERE-THOMBOTHO/317.

(ii) Peter Irungu Mboga shall get absolutely 1.0 acres in LOC 8/NGERERE-THOMBOTHO/317.

The purport of the above rectification can also be achieved (and probably more expeditiously so) by Peter Irungu Mboga transferring to the Substituted Administrator/Applicant, Jane Waithira Macharia, land parcel LOC 8/NGERERE-THOMBOTHO/783, and I so order.

14. Those will be the orders of the court. The parties shall bear their own costs of these proceedings.

DATED AND SIGNED AT MURANG’A THIS 21ST DAY OF DECEMBER 2017

H P G WAWERU

JUDGE

DELIVERED AT MURANG'A THIS 22ND DAY OF DECEMBER 2017