



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
SUCCESSION CAUSE NO. 1067 OF 2011

IN THE MATTER OF THE ESTATE OF ESTHER MURUGI NGOMI (DECEASED)

JUDGMENT

1. The application for consideration is the summons for revocation dated 31st May 2011. The applicant seeks the annulment of the grant of letters of administration issued to Haron Kamau on 6th September 2007 and confirmed on 10th December 2008. The application is based on grounds that;

- i. The grant was obtained fraudulently by making of a false statement or by the concealment from court something material to the case.
- ii. 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 allegations was made in ignorance and or inadvertently.
- iii. That the person to whom the grant was made has failed to proceed diligently with the administration of the estate.

2. The application is supported by the sworn affidavit of Mary Wangari Gakuo and Njenga Ngomi Kamau. They aver that the deceased to who the succession proceedings relate died on 4th February 1996 and letters of administration intestate was made to Haron Kamau Gakuo by Chief Magistrate Court Thika on 6th September 2007 and confirmed on 10th December 2008. That the grant was obtained fraudulently by making a false and concealing from the court the fact that the applicants had not consented to the transmission and transfer of the whole of the Estate to Peter Githinji Nganga whom they aver is not a beneficiary to the estate of the deceased. That the respondent contravened Section 45 of the Law of Succession Cap 160 by selling the same to Peter Githinji Nganga as the same was not consented to by the deceased's children. That the confirmation of grant was obtained by untrue allegations that they were consenting to administration of the estate while in the real sense they were consenting to the confirmation of grant which was confirmed on 10th December 2008 but the estate has not been confirmed. That they are the children of the deceased and rank in priority in seeking a fresh grant whereas the respondent is a grandson of the deceased. That Beth Mumbi Muigai also a beneficiary of the estate is bedridden. That the sale of the said parcel was done on 10th April 2007 before the institution of succession cause was filed on 11th May 2007.

3. The application was opposed. Peter Githinji Nganga filed his affidavit on 25th July 2014. He avers that he learnt of the application from the respondents' Succession Cause No. 194 of 2007 at Thika Law Court. That at the time of filing the application he had sought the committal of the respondents to civil jail for failing to sign the transmission forms adding that the succession cause at Thika was done with the full knowledge of the objectors who in his presence signed the consent. That they had agreed that the land would be sold off hence the sale reason why the certificate of grant was confirmed in his favor but the petitioner appeared to have had a change of mind and communicated to him in writing that he would

revoke the grant. That for the mother and uncle to move the court claiming they were not involved in the process is a lie and they should be tried for perjury. That the application is a collusion between the petitioner and the objector and the court should not be used to perpetuate fraud. That the petitioner has had exclusive possession of the property even before the commencement of the Succession Cause. He urges the court to dismiss the application and make orders for execution.

4. Njenga Ngomi Kamau in reply to the said objection filed an affidavit dated 8th October 2014. He avers that he has never consented to the sale of **L.R. LOC.16/MWAGU/626** to Peter Githinji Nganga or at all but only consented to Haron Kamau Gakuo being granted a grant of letters of administration. That his sister Mary Wangari Gakuo lives in the said parcel **L.R. LOC.16/MWAGU/626** and Peter Githinji Nganga has never had possession of the land. He avers that he never attended Thika Chief Magistrates' Court for the said proceedings, that though he signed the consent dated 9th December 2008 and 17th May 2007 he did so to facilitate the succession cause of his late mother's (deceased's) estate. He refutes having signed the consent dated 9th December 2008. That he could not sign a consent for transmission of **L.R. LOC.16/MWAGU/626** as the same would render his sister Mary Wangari Gakuo homeless and destitute adding that the person who is in possession of the said property can be verified by the chief of Mwagu.

5. Mary Wangari Gakuo in her affidavit in reply dated 21st October 2014 avers that she is aware of the consent for issuance of letters of administration to Haron Kamau Gakuo but never consented to the distribution of the estate of the deceased to effect Peter Githinji Nganga as the sole beneficiary. That Peter Githinji has never been in possession of the estate at all. That the respondent and her son John Gaithuru are residing in the said parcel of land. That neither she nor her brother have colluded in filling the application herein and that Peter Githinji Nganga may have colluded with the respondent to deprive the applicants off their inheritance and the same is fraudulent adding that the grant so issued and confirmed to the respondent should be revoked.

6. Parties filed written submissions. Haron Kamau Gakuo, a grandson to the deceased in his submissions supports the application for revocation filed by the applicants stating that the parcel in question **L.R. LOC.16/MWAGU/626** is ancestral land and the deceased is buried there. He also confirms that during the Succession Cause no. 194 of 2007 the deceased's children were not present.

7. The Interested Party filed his submissions on 17th December 2014. He submits that when the succession cause was commenced the two applicants gave their consent and signed proper documents drawn by an advocate. That under section 66 of the Law of Succession the applicants ranked above the petitioner but knowingly and voluntarily forfeited their right. That the grant so issued was not fraudulent but lawful and legal adding that though the petitioner is a grandson he was listed in the chief's letter as an heir. At confirmation on 17th February the land devolved to Peter Githinji Nganga and on 4th March 2009 the petitioner put the beneficiaries on notice that he had repudiated the contract. That despite efforts to have the petitioner committed to jail for failure to execute the transmission documents which is what led to the current application for revocation this is what the petitioner used to stay the contempt proceedings in the lower court. He submits that the current application is calculated to free the petitioner from an obligation he created which he terms is an abuse of the court process. He urged the court to dismiss the application.

DETERMINATION

8. The application is brought under Section 76 of the Law of Succession Cap 160. The same provides that, '**Revocation or annulment of grant**

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 order or allow;

or

(ii) to proceed diligently with the administration of the estate; or...”

The applicants admit to signing consents but they indicate was limited to the grant of letters of administration to the petitioner for purposes of administration of the deceased's estate. They denied having agreed or consented to the sale of the property **L.R. LOC.16/MWAGU/626**. The 2nd applicant indicates that the said parcel of land is where the deceased is buried and that the same is ancestral land.

9. I note that there is a ruling by the lower court in Succession Cause no 194 of 2007. The learned Magistrate held, *“that the letters of administration was confirmed on 10/12/2008 but the sale agreement was executed way back on 10/4/2007 and the court could not be blind to the fact that contract itself is voidable as the respondent had no capacity to transact as he purported to do. I would be doubtful as to whether the whole family knew or had knowledge of the contract before the succession cause was filed and it is highly likely that the other family members will move to revoke the said grant made to the respondent.”*

10. There is no indication as to whether there is any appeal pending on this matter so as it stands the decision from the lower court is still in effect. Section 82 of the Act *provides that Powers of personal representatives. Personal representatives shall, subject only to any limitation imposed by their grant, have the following powers—*

(b) to sell or otherwise turn to account, so far as seems necessary or desirable in the execution of their duties, all or any part of the assets vested in them, as they think best:

Provided that—

(ii) no immovable property shall be sold before confirmation of the grant;”

The alleged sale is said to have taken place on 10/4/2007 and the grant of letters of administration were confirmed on 10/12/2008 this was before confirmation of the said grant as it stands the personal representative acted without power and as such his action can be termed as fraudulent. The applicants in their sworn affidavits aver that they consented knowing the same were just for obtaining a grant of letters of administration and administering the estate of the deceased and not confirmation of the grant leaving the entire parcel of land to Peter Githinji Nganga as the sole beneficiary. I find that the confirmation of grant of letters of administration was obtained fraudulently by the making of a false statement or by the concealment from the court of something material to the case. I therefore find that the application for revocation has merit and grant the prayers sought. I order that the grant of letters of administration issued to Haron Kamau Gakuo on 6th September 2007 and confirmed on 10th December 2008 is hereby revoked. The applicants being the children of the deceased as per the provisions of Section 66 rank in priority to the respondent who is a grandson to the deceased and as such they can petition for a grant of letters of administration in regards to the deceased's estate. Cost in the cause. It is so ordered.

Dated signed and delivered this 8th day of *December* 2017.

R. E. OUGO.

JUDGE

In the presence of:

Applicants	Absent
Respondent	Absent
Peter Githingi	The Interested Party
Ms. Charity	Court clerk