



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
FAMILY DIVISION
SUCCESSION CAUSE NO. 298 OF 2006
IN THE MATTER OF THE ESTATE OF KAMAU MAGU WAWERU (DECEASED)

L W K..... APPLICANT

VERSUS

J K G RESPONDENT

RULING

K M W the deceased died on 2nd August 2000. By summons for revocation of grant dated 08th February 2006 brought under **Section 76 of Succession Act cap 160 and Rule 44 of the Probate and Administration Rules**; the Applicant seeks to have the grant issued and confirmed on 22nd of April 2003 revoked or annulled on the grounds that,

- I. The grant was obtained fraudulently by the making of false statements and by concealment of material facts.
- II. The grant was obtained by false allegations essential in a point of law.

The Applicant set out reasons for the annulment of grant in her supporting affidavit as follows;

The deceased's family comprised of;

1. J N 1st wife (deceased) and mother to L W K (Applicant)
2. W K 2nd wife (deceased) mother to E W
3. J M K 3rd wife and mother to W K, K K, W K, W K, W K who were all minors in 2006 when the Application herein was filed in Court.

The third wife, her children and the two children from the first two wives all lived together with the deceased on Land Reference No. **NDEIYA/[particulars withheld]** which measured 4.7 acres.

The Respondent J K G in collusion with the Area Chief applied for and was issued with a grant over the deceased's estate. The Respondent did not disclose all members of the deceased's family except the 3rd wife and her children and he concealed the children of the 2 older wives of the deceased. The Respondent concealed the fact that the Co –Administrator, the 3rd wife of the deceased was at the time ill incapacitated and not lucid at times such that she could not give her consent. The children of the 3rd wife were minors and neither of them could consent to obtaining the grant.

The deceased left a valid Will dated 4th January 1999, a copy attached to this Application that the property shall be inherited by his children and he had no debt over the properties.

The Respondent claimed he purchased land from the deceased which was not borne out by evidence. The Respondent was not even a lessee of the deceased's land. The Respondent is not a member of the deceased's family.

In 1994 while the deceased was alive the Respondent attempted to fraudulently dispossess the deceased of the suit property and the Applicant filed a Restriction with the Kiambu District Land Registry. The Respondent presented the grant to the said Registry and the Restriction was removed vide letter dated 20th June 2005 attached to this Application.

The Respondent transferred the suit property Ndeiya/[particulars withheld] in his name. He subdivided the property into 2 parcels Ndeiya/ [particulars withheld] hectares and Ndeiya /[particulars withheld] hectares as established by the attached copies of official search. The said property has been at risk of being sold to third parties.

By the Replying Affidavit filed on 16th June 2006, the Respondent deposed that he bought 1 acre from the deceased of the suit property Ndeiya/[particulars withheld] for Ksh 110,650/= He attached an acknowledgement note of payments totaling Ksh. 52,400/- and the balance of Ksh 52, 600/= to be paid by the Respondent for the sale of 1acre.he attached lists of various payments he allegedly made to the deceased as part of the purchase price.

The Respondent and the deceased's 3rd wife were summoned to the Area Chief and he was allowed to apply for the grant with the consent of the Applicant's step mother J M K. The petition was gazette and thereafter the grant was issued in Limuru Succession Cause 16 of 2002. The grant was confirmed on 23rd March 2003 and he was to obtain 1 acre of the suit property and J M K 3.7 acres as per copy of the confirmed grant attached. He also obtained a Court order to have the restriction by the Applicant removed as evidenced by a copy of Court order attached. Thereafter he proceeded to have the relevant consents for transfer of the said portion

The Applicant whoever dispels of the validity of the consent and says that her step - mother is incapacitated and is not lucid; the Respondent took advantage of this making her consent to making an application for grant of letter of administration.

HEARING

On the hearing on the 22nd of July 2015 the Applicant was present in court along with E W who is the daughter of the deceased by his second wife. The Respondent and other beneficiaries were not in court. The Respondent was served with the hearing notice as indicated in the filed affidavit of service of 22nd July 2015.No reasons were advanced for the Respondent's absence. The Co- administrator died 2 years ago. Her children reside on the suit property. The matter proceeded *exparte*.

The Applicant testified that the deceased bought the land in 1958 and they all lived there, that is the third wife and her five children the children from the two deceased wives and the deceased. To support the family and pay the children's fees the deceased leased a portion of his 4.7 acres to the respondent. However at the time of the deceased's death the Respondent wasn't a lessee. The Applicant also stated that the Respondent is not related in any way to her or to her family but was a teacher that they knew.

The Applicant further explained that she had put a caution on the said piece of land Reference No. NDEIYA/[particulars withheld] in 1994 after she realized that the Respondent had intentions to defraud and disenfranchise her father and their family of the land. The caution remained on the land until the 20th of June 2003 when it was removed by a court order following the Respondents application for confirmation of grant. According to her, the land is valuable and it could not be valued at the amounts shown in the Respondent's affidavit.

ISSUES

From the Affidavits and the evidence produced, the following are the issues for determination to which the court will focus its legal analysis,

- i) Whether the grant should be revoked on the basis that the proceedings to obtain it were defective in substance.
- ii) Whether the respondent has any valid claim on the estate of the deceased.

DETERMINATION

In her Summons for Revocation of Grant, the Applicant made the claim that the grant made to the Respondent should be revoked or annulled on the basis that the grant was obtained fraudulently by the making of false statements and concealment of material facts. The court carefully examined the pleadings of the parties and it has found that the Respondent employed fraudulent means and material non-disclosure to obtain the grant. The Respondent applied for the Grant of Letters of Administration Intestate without disclosing all family members of the deceased's family, he did not inform and or consult them and obtain their consents. The children of the 3rd wife of the deceased were minors at the time and the deceased's 3rd wife was incapacitated.

Section 51 of Law of Succession Act Cap. 160 provides;

‘Every application for a grant of representation shall be made in such form as may be prescribed, signed by the applicant and witnessed in the prescribed manner.

(2) Every application shall include information as to—

g. In the case of total or partial intestacy, the name and address of all surviving spouses, children, parents, brother and sisters of the deceased and the children or child of his or hers then deceased

Section 66 of the Law of Succession Act Cap 160 provides;

When a deceased has died intestate, the court shall, save as otherwise expressly provided, have a final discretion as to the person or persons to whom a grant of letters of administration shall, in the best interests of all concerned, be made, but shall, without prejudice to that discretion, accept as a general guide the following order of preference—

(a surviving spouse or spouses, with or without association of other beneficiaries;

(b) other beneficiaries entitled on intestacy, with priority according to their respective beneficial interests as provided by Part V

(c) The Public Trustee

(d) Creditors

Section 7 (7) of Part III of the Probate and Administration Rules of 1980 provides,

Where a person who is not a person in the order of preference set out in [section 66](#) of the Act seeks a grant of administration intestate he shall before the making of the grant furnish to the court such information as the court may require to enable it to exercise its discretion under that

section and shall also satisfy the court that every person having a prior preference to a grant by virtue of that section has—

(a)renounced his right generally to apply for a grant; or

(b) consented in writing to the making of the grant to the making of the grant to the Applicant

c) been issued with a citation calling upon him either to renounce such right or to apply for a grant'

The Respondent applied to Limuru Law Courts to lift the caution set on the suit property. In his affidavit he alluded to the fact that he had no knowledge of the Applicant. Had he performed even the slightest due diligence he would have found out the relationship between the Applicant and the deceased. The most likely explanation this court can give is the Respondent intentionally wanted to surpass the Applicants claim in order to make claim on the said piece of land.

This Court gleaned the documents of alleged payments to the deceased for purchase of 1 acre of the deceased's land and notes with concern that all payments from 1994 to 2000 were written by the Respondent and the deceased inscribed a thumbprint. The Acknowledgement letter was before an advocate yet the deceased's interests could not have been protected by the same advocate of the Respondent. The sums paid in the said documents are not consistent and seem exaggerated and only in rare circumstances were there witnesses to these payments. One acre in Kiambu area would not be valued at Ksh. 100,000/- or so in 2000. Even then this court is not convinced the Respondent paid the said sum. Finally, the Respondent carried out the whole process of obtaining grant upto transfer of land that comprised of the deceased's estate alone and solo without consulting or in any way involving the family of the deceased. How is the Court sure he only subdivided 1 acre and which portion was agreed on or he just hived off what was prime land for himself?

COURT ORDERS

- 1. The totality of these considerations is that the grant obtained by the Respondent is invalid, irregular and illegal and is hereby revoked forthwith.**
- 2. The Grant of letters of Administration Intestate of the estate of the deceased was obtained in a manner contrary to Section 51 of The Law of Succession Act, Section 66 of the Law of Succession Act and Subsection 2(g) and Section 7 Subsection 7 of the Probate and Administration Rules.**
- 3. The Court issues a new/fresh grant to the children of the deceased jointly as administrators as follows;**
 - a. L W K (Applicant)**
 - b. E W**
 - c. W K**
- 4. The administrators shall determine what sums the Respondent paid to their father and what portion of land if at all he is entitled to from the suit property.**
- 5. The administrators shall in consultation with all beneficiaries and dependents of the deceased's estate discuss, agree and determine on the mode of distribution of the suit property amongst the beneficiaries.**
- 6. The subdivisions and transfers of the suit property L.R. Ndeiya /[particulars withheld] are revoked and no further subdivision, transfer alienation or disposal of the suit property and its subdivision to 2 parcels L.R. Ndeiya /[particulars withheld] and Ndweiya/[particulars withheld] shall be done until further orders of the Court.**
- 7. In the event of any challenge or disagreement each party is at liberty to apply to court.**
- 8. Each party to bear its own costs.**

READ AND DELIVERED IN OPEN COURT AT NAIROBI THIS 31ST DAY OF MARCH, 2016

MARGARET W. MUIGAI

JUDGE

In the presence of;

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