



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

PROBATE AND ADMINISTRATION DIVISION

SUCCESSION CAUSE NO. 1673 OF 2014

IN THE MATTER OF THE ESTATE OF DANIEL MUHIA MAGONDU (DECEASED)

PETER NJOROGI MUHIAAPPLICANT

-versus-

MARY WANJIRU NDIING'URI.....1ST RESPONDENT

KOINA WAMBUKU.....2ND RESPONDENT

RULING

1. This is a Summons for the revocation of Certificate of Confirmation of Grant dated 30th June 2008, brought under **Section 76(b)** of the Law of **Succession Act** and **rules 44(1)** of the **Probate and Administration Rules** issued by the Senior Resident Magistrate court in Limuru.
2. The application is premised on the grounds that the certificate was obtained fraudulently by concealment from the Court of the true beneficiaries to the Estate, that Peter Njoroge Muhia (hereinafter Applicant) who is a son to the deceased was excluded from the Estate and thus disinherited, that one Koina Wambuku the 2nd Respondent has been given the share that would have been given to the Applicant, and that the Applicant did not give his consent for the distribution of the Estate.
3. This application is supported by the affidavit sworn by the Applicant on 13th June 2014, in which he deposes that he is one of the three children of the deceased, the others being Mary Wanjiru Ndinguri and Kamau Muhia Magondu (now deceased). That Mary Wanjiru Ndinguri and Kamau Muhia Magondu were the joint Administrators of the Estate of the deceased who was the registered proprietor of L.R. No. Limuru/Kamirithu/1200 measuring 1.62 acres or thereabouts) which was the only property comprising the Estate.
4. The Applicant avers that while he agrees to having consented to Mary Wanjiru Ndinguri and Kamau Muhia Magondu being appointed as joint Administrators of the Estate, he did not consent to the mode of distribution of the Estate and that he was not informed of the process leading to the confirmation of the Grant. That the Administrators took an equal share of 0.54 acres in L.R. No. Limuru/Kamirithu/1200 only, while his share of the same measurement was given to the 2nd Respondent.
5. The Applicant further avers that the Administrators caused L.R. No. Limuru/Kamirithu/1200 to be

subdivided into L.R. No. Limuru/Kamirithu/3222-3224 and fraudulently transferred L.R. No. Limuru/Kamirithu/3223 to the 2nd Respondent thereby disinheriting the Applicant. He urged the court to revoke the certificate of confirmation of Grant issued on 30th June 2008 in Limuru Succession Cause No. 25 of 2008 and issue another one showing the distribution of L.R. Limuru/Kamirithu/1200 as follows:

Kamau Muhia Magondu 0 0.54 acres absolutely or his personal representative Mary Wanjiru Nding'uri – 0.54 absolutely Peter Njoroge Muhia – 0.54 acres absolutely

That unless the Estate is redistributed as shown above the Applicant will be disinherited and rendered homeless and destitute.

6. The application is opposed, for there is a reply to it in the form of an affidavit sworn on 13th October, 2014 by Koina Wambuku who is named in the application as second Respondent. He avers that it is true that the Applicant is the son of the deceased, and that the deceased was the owner of the parcel No. Limuru/Kamirithu/1200. He however states that the Applicant approached the Respondent and requested him to purchase his portion of land measuring 0.54 Ha. out of the whole parcel of Limuru/Kamirithu/1200 to enable the family use part of the money to complete the Succession Cause No. 25 of 2008 in Limuru, in relation to the Estate of the deceased.
7. The Respondent avers further that on 19th May 2008, he and the Applicant entered into a contract whereby the sale agreement was drafted by J. N. Abuga Advocate and the Applicant willingly sold his portion to the Respondent. That the beneficiaries of the Estate consented to the Letters of Confirmation being confirmed and the Respondent's share that he bought from the Applicant was ascertained. The Respondent asserts that after the confirmation of grant he applied for his title deed at Kiambu Lands Registry and was issued with one being number L.R. No. Limuru/Kamirithu/3223.
8. The Respondent argues that the Applicant's application is time barred and should be dismissed. That the Applicant misled the court when he stated that he was left out in the distribution of the Estate. He asserts that the Applicant has come to court with unclean hands and that his actions are an afterthought and his suit frivolous and should not be entertained.
9. The counsels on record filed brief submissions. Mr. Mwaura learned counsel, for the Applicant submitted that the Applicant has made out a case that warrants the revocation of the Certificate of Confirmation of Grant issued by the lower court on 30th June, 2008, on grounds that the second Respondent did admit in his evidence that he is not a son of the deceased. That although the second Respondent alleged to have purchased the Applicant's interest in L.R. Limuru/Kamirithu/1200 for Kshs.350,000/= he did not furnish the court with evidence of actual payment of the said sum to the Applicant.
10. Mr. Mwaura argued that the sale agreement was allegedly entered into between the Applicant and the second Respondent on 19th May 2008, yet the Applicant had no land to sell to the Respondent as the Certificate of Confirmation of Grant which vests property in beneficiaries had not been issued until 30th June 2008. That the second Respondent's name was inserted in the summons for confirmation of Grant and that of the Applicant deleted on the 27th June 2008 when the Summons for confirmation of Grant came up for hearing. That it was the second Respondent's assertion that his name was inserted in the Summons by the Court without the consent of the Applicant.
11. Mr. Mwaura also submitted that the Letters of Administration and the Certificate of Confirmation of Grant were irregular since according to the second Respondent's evidence, the money he allegedly paid to the Applicant on the 19th May 2008 was to be used to petition for the Grant of Letters of Administration which Grant was confirmed on 27th June 2008. That under **section 38** of the **Law of Succession Act** the second Respondent does not qualify for an interest in the deceased's Estate. That the Certificate of Confirmation ought not to have been issued, since the Applicant had not given his consent for the confirmation of the Grant under Rule 40(8) of the

Probate and Administration Rules.

12. Mr. Mwaura prays that the Certificate of Confirmation of Grant issued by the Senior Principal Magistrate's court, Limuru on 30th June 2008 be revoked or amended, by deleting the second Respondent's name and replacing it with that of the Applicant as the owner of 0.54 acre in L.R. Limuru/Kamirithu/3223. Further that the Applicant be issued with another Title Deed for the said parcel of land in his name.
13. Mr. Onyancha for the second Respondent submitted that, the second Respondent was approached by the Applicant to buy his part of the inheritance from his late father's Estate being Limuru/Kamirithu/1200. They entered into a contract and the sale was transacted through Abuga & Co. Advocates. The Applicant received a part of the purchase price which prompted the filing of the succession cause No. 25 of 2008 in Limuru Law Courts. That the second Respondent became entitled to a share of the Applicant's portion of land in the deceased's Estate by virtue of being a purchaser of the said portion.
14. Mr. Onyancha stated that the Applicant and his siblings did not object to the inclusion of the second Respondent in the schedule of distribution of the deceased's Estate. He argued that the Applicant's claim after such an inordinately long period is an afterthought and he is not entitled to the aid of this court of Equity when he is trying to extricate himself from circumstances he has created.
15. Mr. Onyancha further argued that the Applicant's intention is to defraud the second Respondent of the portion of land he sold to him legally and for value. That Article 40 of the Constitution protects the second Respondent's inherent right to property which he acquired legally. He prays that the Applicant's application be dismissed, since the second Respondent has proved that he purchased the suit property and had the transfer registered and he has been in possession and ownership of the suit property for a period of six (6) years.
16. Upon careful consideration of the pleadings, the oral evidence adduced in court and the rival submissions of the counsels on record, the court finds that the issues for determination are:
 - i. Whether the impugned grant was obtained by making of a false statement and concealing some facts that were material to the cause.
 - ii. Whether the proceedings leading to the making of the grant were fatally defective.
17. The circumstances that can lead to the revocation of grant have been set out in **Section 76 Law of Succession**. For a grant to be revoked either on the application of an interested party or on the court's own motion there must be evidence that the proceedings to obtain the grant were defective in substance, or that the grant was obtained fraudulently by making of false statement, or by concealment of something material to the case, or that the grant was obtained by means of untrue allegations of facts essential in point of law.
18. A grant may also be revoked if the person named in the grant has failed to apply for confirmation or to proceed diligently with the administration of the Estate. See - **Matheka and anor v Matheka [2005] 1 KLR pg 456**. It may also be revoked if it can be shown to the Court that the person to whom the grant has been issued has failed to produce to the Court such inventory or account of administration as may be required.
19. The record in Limuru Succession Cause No. 25 of 2008 indicates that the Applicant has not been entirely truthful in his averments in the instant application. In the aforementioned cause the Applicant herein filed, on 27th June 2008, an affidavit sworn on 25th June 2008. In the said affidavit he deposed *inter alia* that he was aged 59 years old was sickly, and feared that anything might happen before he transferred the portion of land to the buyer, since he was epileptic and had no wife or children to look after him.

20. The Applicant averred that he was entitled to 0.54 acres in Limuru/Kamirithu/1200 which he sold to one Koina Wambuku of identity card number 13843703. He contended that the identification of shares had been ascertained and determined as follows:

Limuru/Kamirithu/1200

- a. **Kamau Muhia Magondu - 0.54 acres**
- b. **Mary Wanjiru Ndirangu - 0.54 acres**
- c. **Peter Njoroge Muhia - 0.54 acres to Koina Wambuku**

21. The Co-Administrators Kamau Muhia Magondu (now deceased) and Mary Wanjiru Ndinguri, also swore a joint affidavit dated 25th June 2008 and filed in court on 27th June 2008. Similarly they deposed that the Applicant was epileptic and sickly was aged 59 years old and had not married. That as a result of his sickness he sold his portion of land to one Koina Wambuku and it was the Administrators' wish to divide the parcel of land amongst themselves and the Applicant's portion be transferred to Koina Wambuku. They confirmed that the identification was ascertained and determined as follows:

Limuru/Kamirithu/1200

- a. Kamau Muhia Magondu - 0.54 acres
- b. Mary Wanjiru Ndirangu - 0.54 acres
- c. Koina Wambuku (purchaser) - 0.54 acres

22. After a careful consideration of the record from the lower court the court finds that the issues of fraud and making of false statement or concealment of material facts to the case do not arise, and the allegations have not been proved. The Applicant's application which came six years after confirmation of the grant and distribution of the Estate appears to have been an afterthought. The Applicant is the author of his own misfortune when he assumed that he did not have long to live due to his sickly state and sold his share. He now wishes to have a second bite at the cherry at the expense of the second Respondent. The court finds that the Application is therefore found to be lacking in merit and is dismissed accordingly.

SIGNED DATED and DELIVERED in open court this 27th day of April 2016

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L. A. ACHODE

JUDGE

In the presence ofadvocate for the Applicant

In the presence ofadvocate for the Respondents