



**IN THE HIGH COURT OF KENYA AT NAIVASHA**

**SUCCESSION CAUSE NO. 74 OF 2014**

**(FORMERLY CHIEF MAGISTRATE'S SUCCESSION CAUSE NO. 55 OF 2014)**

**IN THE MATTER OF THE ESTATE OF PHILIP GITONGA MWANGI ALIAS PHILIP  
MURIUKI MWANGI (DECEASED)**

**AND**

**JOSEPHIN WANJIRU MWANGI.....1<sup>ST</sup> PETITIONER**

**PETER J. KIRAGU MWANGI..... 2<sup>ND</sup> PETITIONER**

**RULING**

1. Following the confirmation of the grant issued to **Josephine Wanjiru Mwangi** and **Peter J. Kiragu Mwangi** on 23/3/15 a summons seeking the revocation of the grant was filed by one **Lucia Njeri Kaberu** on 14/4/15, claiming to be the bonafide owner of Land Parcels No. **Naivasha/Mwichiringiri Block 4/2803 and 2804** through purchase from **Mirera Suswa Farmers** in 1980.

2. That the deceased illegally took possession of the said land parcels by interfering with the stated vendor's records; a matter which was determined in her favour by a Tribunal in 2010; that her efforts to file an objection in February 2015 were unsuccessful as the court file could not be traced until 25<sup>th</sup> March, 2015 by which date the grant had been confirmed. She reads mischief in these developments and asserts that the plots in question are her property.

3. The objection has been strongly opposed by the administrators of the estate of the deceased primarily on the basis that the two properties were registered in the name of the deceased, who was the first registered owner. They take issue with the documents tendered by the Objector and the statements of her witnesses.

4. The parties filed several affidavits and annexures in support of their respective positions. I have considered this material in light of the parties' submissions. I take the following view of the matter.

5. Firstly regarding the unavailability of the court file, it is evident that upon the matter being referred to the High Court on 18/12/14 by the Subordinate court, it was assigned a new number. However, the Objector's failure to file her protest to the confirmation does not in any way prejudice her case as she has now filed a proper application for revocation of grant. Besides, the substance of the said application is in every respect similar to the alleged unfiled objections attached to her affidavit and marked **LWK 5**.

6. I note further that the deceased herein died in the year 2004. While it is true that the Objector has all along sought to assert her title in the suit properties, I note that no suit had even been filed in court. In 2010, it appears that a panel of elders purported to determine the ownership of the suit properties under the now repealed Land Disputes Tribunal Act in **Land Dispute No. 149 of 2010 Lucia Njeri Kaberu** -

**vs- Philip Gitonga Mwangi.**

Evidently by that date, the deceased was long dead. I do not wish to make any comment on the purported decision of the elders save to state that as a legal decision it has doubtful authority.

7. It would appear that the deceased has been the registered owner of the suit properties since 1990 and 1987 respectively, a fact not unknown to or disputed by the Objector. It is no doubt in light of this reality that the Objector claims that the titles were obtained through fraud. That is a serious allegation that requires much more inquiry by the court than is possible in proceedings of this nature. In my considered view a proper suit would serve the Objector better as she would have the opportunity to canvass her claim fully and to join relevant necessary parties.

8. Finally, this application having been brought Under Section 76 of Law of Succession Act, it should have been demonstrated to fall under the provisions of the said Section. The grounds on the face of the application, the affidavits and submissions of the Objector fail on that score. No effort was apparently made to bring the application within the grounds for revocation set out in Section 76 (a) to (e). of the Law of Succession Act.

9. The application must fail for all the reasons given. I observe however that although the deceased died in 2004 the present succession cause was only filed in 2014, the same year when a Grant of probate with will in respect of the estate of **Mwangi Kiragu**, was issued in Nairobi Succession Cause **No. 2522 of 2011**.

10. The said confirmed grant of probate is attached to the Petitioners' application to confirm the grant herein filed on 17/12/14. I note that the properties mentioned herein were also listed among the properties of the deceased. In the Nairobi Succession cause **Mwangi Kiragu** had died in 2010. He left a will bequeathing parcel **Naivasha/Mwichiringiri Block 4 /2803** to one **Michael Mwaniki Mwangi** and parcel No **Naivasha/Mwichiringiri/Block 4/2804** to **Patrick Giathi Mwangi**. Seemingly, the deceased in the present case who pre-deceased him was the testator's or other close relative. I have not seen any material to explain how the properties came to be included in his estate, whereas they have always been registered in the name of the deceased.

11. Be that as it may, there is a confirmed grant of probate in respect of that will. Possibly, the parties herein approached this court for a grant upon the realization that the disposition of the said properties could only be done by the registered owner or the authorized administrator of the estate of the deceased herein.

12. I would rather say no more on this question save to observe that the administrators in the two estates ought to have excluded the two suit properties from the application of the Grant of Probate, and better still, filed the instant cause before the cause in Nairobi.

To their credit however they have not concealed the proceedings before the High Court in Nairobi.

13. In the result, the application for revocation of the grant issued herein is dismissed. Each party will bear own costs.

Delivered and Signed this **22<sup>nd</sup>** day of **April, 2016**.

**JUDGE**

**C. MEOLI**

Mr. Gichuki for the Petitioner/Respondent

Mr. Obino for Objector

Cc Barasa