



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT EMBU
SUCCESSION CAUSE NO. 315 OF 2002

In the matter of the Estate of NYAGA RUDIA (Deceased)

TERESIA KARANJA.....ADMINISTRATOR/APPLICANT

VERSUS

PIOUS NJIRU..... RESPONDENT/CLAIMANT

RULING

1. This is the application dated 8/12/2014 seeking for order that the grant confirmed on 20/3/2008 be reviewed/ revoked or varied and the ruling delivered on 27/11/2014 be set aside. The application is supported by the affidavit of Teresia Karanja. In the affidavit, the applicant states that she is an administrator and was granted letters of administration *ad litem* on 30/10/2012 after the death of the original administrator who was her mother. The applicant is one of the children of the deceased. She states that she discovered the respondent herein was included as one of the heirs of the deceased yet he was not a son of the deceased.
2. According to the applicant, the respondent had only been given a portion to cultivate by one of the widows of the deceased without the involvement of the other co-wife. The applicant states that she is willing to deposit with court the money which the respondent claims to have given one of the co-wives.
3. In the replying affidavit the respondent stated that through an application dated 8/9/2014 the court authorized the Deputy Registrar to sign all the necessary documents to facilitate him acquire his share in the estate as per the confirmed grant. He argues that the applicant has been frustrating his efforts to acquire his share. There is no new or important material or fact that has arisen to warrant the confirmed grant to be revoked, reviewed or varied.
4. Parties submitted orally before the court relying on their affidavits.
5. The applicant stated that the respondent bought the $\frac{3}{4}$ of the land from her mother who was the original administrator for Kshs.75,000/=. The confirmed grant shows that the land is half an acre. The respondent already has a title deed for the land while he is not a beneficiary to the estate.
6. The respondent submitted that he bought $\frac{1}{2}$ an acre land from the administrator who wanted to raise money for the succession cause. A sale agreement was made before an advocate with the applicant as the witness.
7. The applicant later took over the administration of the estate after her mother died. After the respondent obtained a court order allowing the Deputy Registrar to sign the transfer documents on his behalf he obtained a title for $\frac{1}{2}$ an acre after the applicant became uncooperative.

8. The conditions for revocation of grant are set out in section 76 of the Law of Succession Act which provides that;

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

(iii) to produce to the court, within the time prescribed, any such inventory or account of administration as is required by the provisions of paragraphs (e) and (g) of section 83 or has produced any such inventory or account which is false in any material particular; or

(e) that the grant has become useless and inoperative through subsequent circumstances.

9. The requirements for revocation of grant were explained in the case of **JOYCE NGIMA NJERU & ANOTHER VS ANN WAMBETI NJUE [2012] eKLR**. The case of **MATHEKA & ANOTHER VS MATHEKA [2005] KLR 455** was cited herein where it was held:-

Even when revocation is by the court upon its 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 the making of a false statement or by concealment of something material to the case, or that the grant was obtained by means of untrue allegation of facts essential in point of law or that the person named in the grant has failed to apply for confirmation or to proceed diligently with the administration of the estate.

10. The grant was confirmed on 6/10/2003 in the presence of the two administrators and their counsels. The beneficiaries were also in attendance. The applicant appeared in court several times during the pendency of this cause and never objected to the respondent getting his share. This case dates back to 1997 when it was filed. An objection was raised by the 2nd widow of the deceased Angelina Warunji Nyaga resulting in revocation of grant and appointment of the two widows as joint administrators.

11. When the grant was finally confirmed the two widows were in agreement. A review was later done to change distribution with the agreement of the parties. The applicant took over this case after the death of her mother Angelina Warunji and I believe that the co-administrator Luciana was also deceased.

12. The applicant argued that the respondent was not a beneficiary in the estate and should not have been considered for any share in the estate. However, the respondent has explained that the original administrator and mother of the applicant Angelina Warunji Nyaga. The ½ acre was the respondent raise funds for the succession process. He paid fully for the ½ acre as per the agreement.

13. Later on the parties agreed that the respondent be added another ¼ acre for which he paid Kshs.35,000/= both in case and by providing food items leaving a balance of Kshs.15,000/= which he

said was willing to pay the balance but the applicant became uncooperative. He then decided to forfeit the ¼ of an acre and pursued the implementation of the grant thereby obtaining the title.

14. When the respondent signed the land sale agreement, the applicant signed as a witness to the parties. It is strange that so many years later she is alleging fraud on part of the respondent. She was not the vendor but one of the administrators. It would be an uphill task for a witness to the agreement to allege fraud having already affixed her signature.

15. It is my finding that the applicant has failed to demonstrate any fraud or concealment of material facts by any of the previous administrators. The respondent bought the portion that he was given title and forfeited the ¼ acre he had not completed payment. The respondent ought to have been named as a purchaser in the confirmation of the grant and not a beneficiary.

16. But whatever name he was called, the respondent has demonstrated his interest in the estate dating back to the year 2003 when the grant was confirmed when the applicant was just a mere beneficiary. It is common in cases of this nature to have purchasers be given shares by the beneficiaries during the cause.

17. I find no merit in this application and I dismiss it with costs to the Respondent.

18. It is hereby so ordered.

DELIVERED, DATED AND SIGNED AT EMBU THIS 20TH DAY OF SEPTEMBER, 2016.

F. MUCHEMI

J U D G E

In the presence of:-

Both parties present in person