



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

SUCCESSION CAUSE NO.519 OF 2011

**IN THE MATTER OF THE ESTATE OF JOSEPH GITAU NTAYIA *Alias* GITAU OLE NTAYIA
(DECEASED)**

SAMSON LEMWERIA OLE NTAIYA.....PETITIONER/RESPONDENT

VERSUS

PETER KINYANJUI NTAIYA.....OBJECTOR/APPLICANT

RULING

BACKGROUND:

1. This ruling is in respect of the of the summons for revocation and/or annulment of grant dated 10th December, 2013.

2. The prayers sought are:

a) Spent

b) That the Grant of letters of administration made to SAMSON LEMERIA OLE NTAIYA and confirmed on the 29th June, 2012 by Hon. Justice ANYARA EMUKULE be revoked and/or annulled.

c) That LR. NO.NAROK/CIS MARA ENABELBEL-ENE NGETIA/454 be struck off the record of Assets comprising the Estate of the late JOSEPH GITAU NTAIYA.

d) That the Certificate of title obtained by the Petitioner using the Grant be cancelled and the same be issued to the objector herein.

e) Spent

3. The application is premised on grounds that:

a) The deceased sold the suit property the LR. NO.NAROK/CIS-MARA ENABELBEL-ENE NGETIA/454 to the objector before he died a factor known to the petitioner.

b) The Petitioner fraudulently misled the court not disclosing this fact.

c) The suit property was not available to the Estate as it belongs to the Objector.

d) The Petitioner did not inform the court of the Succession proceedings court until after the judgment of Nakuru HC.ELC NO.130 of 2012 was applied for.

4. The same is further supported by the sworn affidavit of Peter Kinyanjui Ole Ntaiya.

5. The summons is opposed and a replying affidavit by Samson Lemeria Ole Ntaiya is on record.

6. Directions were taken that the summons be disposed off by way of written submissions and both sides have filed submissions in compliance with the said directions.

THE APPLICANT'S CASE

7. The gist of the Applicant's case as gleaned from the grounds in support and the affidavit and two (2) further affidavits in support filed is that the property known as LR. NO.NAROK/CIS-MARA ENABELBEL-ENE NGETIA/454 to the applicant before he died. This fact was known to the petitioner.

8. The petitioner is accused of misleading the court by failing to disclose this fact specifically failing to disclosed that the property was not available to the Estate but belonged to the objector.

9. It is urged that the applicant had sued the Petitioner/Respondent in Nakuru High Court Elc. No.130 of 2012 and CMCC No.1159 of 2011 and in both cases the applicant had sought restraining orders against the petitioner. The pleadings in both cases are exhibited.

THE RESPONDENT'S CASE

10. The Respondent avers that he acquired registered interests in the property LR Narok/CIS–Mara/Enabelbel/Enengetia/454 on 26/7/2012 through transmission from the deceased vide the succession cause herein. A certificate of confirmation of grant was issued on 29th June, 2012.

11. It is urged that the application for grant was gazetted and there was no protest or objection raise by the Applicant herein. The Applicant is neither a beneficiary or dependant of the deceased. The applicant should have enforced his rights during the lifetime of the deceased.

12. It is the Respondent's case that the transaction in which the applicant claims to have bought parcel No.454 was in violation of the Land Control Act (Cap 302 Laws of Kenya) and the claim to the land is also violation of the Limitations of Actions Act (Cap 22 Laws of Kenya).

13. It is stated that the Applicant's rights cannot be enforced in the succession cause but in the Environment and Land Court. Indeed, a suit is acknowledged to have been filed at Nakuru ELC being H.C.ELC. NO.130 of 2012 where the Respondent herein is the objector. There was also another suit before the Chief Magistrate at Nakuru being CMCC No.1159 of 2011 which was struck out with costs on the 15th August, 2014.

ISSUES FOR DETERMINATION:

14. The issues for determination are:

i) Whether the grant herein should be revoked/annulled

ii) If 1 above answers in the negative, whether any other orders are available to the applicant.

ANALYSIS:

15. The facts of this case are crystal clear. The Applicant lays a claim to the property **LR NAROK/CIS–**

MARA/ENABELBEL/ENENGETIA/454. He contends that the same had been sold to him by the deceased before he died. He therefore asserts that the same did not form part of the free property of the deceased available for distribution by the estate.

16. The Respondent's position is that the applicant has failed to achieve the threshold for revocation/or annulment of grant. He is neither a beneficiary nor a dependant. It is not shown that the proceedings were defective in substance or that grant was obtained fraudulently. It is urged that the applicant's remedy lies in the ELC court.

DETERMINATION

17. I cannot agree more with the Respondent that the Applicant's remedy lies in the ELC Court. He has lodged a case there already. And whereas, I am persuaded that the threshold for revocation of grant has not been achieved, I am cognisant of the fact that the property, the subject matter herein is now in the hands of the Respondent as a registered owner. In the present state of affairs, the Respondent is in a position to deal with the property as he would desire. Indeed the transmission of the land was legal and obtained through the court process.

18. That process was initiated on 26th September, 2011. In the same year, the applicant lodged a suit over the land before the Chief Magistrate Court. It is a true that the applicant is neither a beneficiary nor a dependant of the estate of the deceased. But as a citizen of this land, he has protection of the law to ventilate his claim over the land. He has moved to the ELC Court where his case is pending.

19. It is in the wider interest of justice that the suit property herein be preserved. Under **rule 73** of the **Probate and Administration rules**, the law clothes this court with powers to make such orders as may be necessary to meet the ends of justice. That rule provides:

“Nothing in these rules shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.”

20. In the circumstances of this case, I am not satisfied that the grant should be revoked/annulled at this stage. Neither am I satisfied that the title issued to the Respondent should be cancelled. I am however satisfied that in order that the proceedings in the ELC Court are not rendered nugatory, preservatory orders should issue in respect of the suit property and the subsequent status of the property in question should abide the outcome of the matter before the ELC Court.

ORDERS/DIRECTIONS

21. With the result that a prohibitory order shall issue restraining any dealing with the suit property being **LR NAROK/CIS–MARA/ENABELBEL/ENENGETIA/454**, by way of sale or transfer pending the outcome of Nakuru ELC No.130 of 2012.

Order accordingly.

Dated, Signed and Delivered at Nakuru this 17th day of October, 2016.

A. K. NDUNG'U

JUDGE