



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT EMBU**  
**SUCCESSION CAUSE NO. 486'A' OF 2009**

***In the matter of the Estate of JOSSIAH NDIGA Alias JOSIAH DISMUS (Deceased)***

**KENETH NGUNJIRI.....1ST APPLICANT**  
**ANTHONY MBUNDI.....2ND APPLICANT**  
**SAMUEL MURIITHI.....3RD APPLICANT**  
**STEPHEN KIURA.....4TH APPLICANT**  
**JAMES GACHINGA.....5TH APPLICANT**  
**MARY NJERI NYAMU.....6TH APPLICANT**  
**SOSPETER GACHOKI NJOGU.....7TH APPLICANT**  
**WILSON NJAGI MITHIRU.....8TH APPLICANT**  
**JAMES GACHINGA GATUMU.....9TH APPLICANT**  
**JAMES MAGURU WAGICHERU.....10TH APPLICANT**  
**MARY WOTHAYA MURAGE.....11TH APPLICANT**

**VERSUS**

**ANTHONY NGARURI NJUKI.....1ST RESPONDENT**  
**CHARLES KATHUTI MWOBE.....2ND RESPONDENT**

**RULING**

1. This is a ruling on several summons for revocation of grant filed by eleven (11) applicants and which were consolidated for purpose of hearing and determination. The applicants are represented by two firms of advocates.

2. The 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> applicants filed separate summonses dated 4/12/2015 and are represented by Wanjiru Wambugu Advocates. The 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup> and 9<sup>th</sup> applicants summonses are dated 11/12/2015 while those of 10<sup>th</sup> and 11<sup>th</sup> applicants are dated 8/3/2016. The 5<sup>th</sup> to 11<sup>th</sup> applicants are represented by Magee wa Magee & Co. Advocates.

3. All the applicants seek for two prayers. The first one is for the annulment and revocation of the grant confirmed on 23/8/2012 and amended on 8/6/2015 on grounds that the same was defective in substance and that it was obtained fraudulently by making false statements or by the concealment of facts material to the case.
4. The second prayer is for review and/or setting aside of the orders made vide the ruling delivered on 19/01/2012 to the extent that they did not cater for the applicants interests in L.R. Ngariama/Thirikwa/3074, 3073, 2573, 2571, 2500, 2494, 2546, 3080, 3081, 2547, 2549, 2542, 2545 and 2548.
5. The facts leading to the summonses (now referred as the summon upon consolidation) are similar. The applicants are purchasers of various plots resulting from the subdivision of L.R. Ngariama/Thirikwa/138 which was the subject of Kerugoya SRM Succession Cause No. 84 of 2007 which gave rise to this cause Embu HC Succession Cause No. 486'A' of 2009.
6. The petitioner/administrator in Kerugoya Succession Cause No. 84 of 2007 was Anthony Ngaruri Njuki the 1<sup>st</sup> respondent. The 1<sup>st</sup> respondent and the 2<sup>nd</sup> respondent's father Mwobe Kathuti were the beneficiaries in the Kerugoya Succession Cause No. 84 of 2007. In the grant confirmed on 2/9/2008 the 1<sup>st</sup> respondent inherited 7 ½ acres while the 2<sup>nd</sup> respondent's father got 2 acres out of Ngariama/Thirikwa/138.
7. The father of the 2<sup>nd</sup> respondent applied for revocation of the grant confirmed on 2/9/2008. The father passed on pending the determination of the summons for revocation. He successfully made an application for substitution in place of his father.
8. In her ruling dated 19/01/2012, Ong'udi, J. revoked the grant issued and confirmed in the Kerugoya case on ground that the court which issued it was not seized of the monetary jurisdiction prescribe by the law. The other issues raised in the application and which were disputed were reserved for determination at a later date, that is, during the confirmation of the grant.
9. The judge issued a fresh grant in favour of the 1<sup>st</sup> respondent and Mwobe Kathuti the father of the 2<sup>nd</sup> respondent jointly. It was directed that all the interested parties should be brought on board during the confirmation of grant.
10. The applicants herein argue that they were the persons referred to as “interested parties” in the ruling delivered on 19/01/2012 in that they had purchased plots from the 1<sup>st</sup> respondent Anthony Ngaruri who obtained the title to his portion of 7½ acres as bequeathed by the Kerugoya grant which he further sub-divided into four separate parcels Ngariama/Thirikwa/2497, 2498, 2499 and 2500. Some of these parcels were further sub-divided and disposed of before revocation of the grant.
11. The applicants contend that the court which revoked the grant had not been notified of the fact that the Kerugoya grant had already been executed and the resultant sub- division parcels given new titles. Neither was the court told that some of the portion of the 1<sup>st</sup> respondent had been sub-divided into plots and sold to the applicants herein and that the applicants had already acquired certificates of titles to the land in their names.
12. For the foregoing reasons the applicants submit that the respondents who were both aware of the applicants interests did not disclose these material facts to the court as it proceeded to revoke the Kerugoya grant. It was contended that the revocation of the grant and subsequent registration of the original land L.R. Ngariama/Thirikwa/138 has infringed the applicants constitutional rights.
13. It is further argued that the cancellation of the applicants' titles without a court order and the subsequent registration of the original land in the 2<sup>nd</sup> respondent's name was illegal rendering the transactions null and void.

14. The applicants further submit that they were purchasers in good faith and without notice of other transactions, court orders or other interests and that their interests ought to be protected.

15. The 1<sup>st</sup> respondent Anthony Ngaruri has no objection to the application for revocation of the grant. He admits that the applicants were never involved in the confirmation of grant as the court directed in its ruling of 19/01/2012. He also admits that he sold the plots to the applicants soon after he acquired the title to his own portion following the confirmation of the grant in the Kerugoya case.

16. The 2<sup>nd</sup> respondent Charles Kathuti Mwobe opposes the application on grounds that he had no obligation to serve the applicants with the summons for confirmation of grant in this case since there was no dispute between him and them. He states that the original grant was flawed in that it was issued by a court without jurisdiction.

17. Section 76 of the Law of Succession Act provides for annulment or revocation of grant and it provides:-

*A grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by an 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 has ordered or allowed; 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.*

18. In this application, the following issues are not in dispute:-

*(i) That Kerugoya grant confirmed on 2/9/2008 was executed and that the two beneficiaries got their respective portions and the titles issued in their names.*

*(ii) That the 1<sup>st</sup> respondent subdivided or sold his portion L.R. Ngariama/Thirikwa/2497, 2498, 2499 and 2500 into plots some of which he sold to the applicants in this case.*

*(iii) That the transfers to the applicants were executed and titles issued in respect of their respective parcels.*

*(iv) That the grant was revoked subsequently following the transactions between the 1<sup>st</sup> respondents and the applicants which resulted in change of ownership of the respective parcels.*

*(v) That the applicants who had attained the status of interested parties in the court proceedings in the Embu Succession Cause were not involved in the confirmation and in the amendment of the grant despite the court having so directed.*

*(vi) that the implementation of the Embu succession cause grant adversely affected the interests of the applicants who were purchasers in good faith.*

*(vii) That the respondents never disclosed to the court that L.R. Ngariama/Thirikwa/138 never existed as the register had been closed on sub-division of the resultant parcels.*

*(viii) The court was not informed that the registers for some of the resultant parcels had been closed on sub-division into smaller parcels.*

*(ix) That the fact that the new parcels had been transferred to the applicants and titles issued was a material fact concealed to the court at the time of the revocation and confirmation of the grant.*

*(x) That the other pending issues of whether the 2<sup>nd</sup> respondent's father was a son to the deceased were never canvassed and determined during the confirmation of grant as directed by the court in its ruling.*

19. To the applicants summons was annexed land sale agreements and copies of title deed in their names. The agreements show that the plots sold between 2008 and 2011 were sold to the respective applicants by the respondents separately after each one of them got titles to their respective shares. This means that the 1<sup>st</sup> respondent has sold several plots to the applicants and that the Mwobe Kathuti has sold some of the plots from his share.

20. Mwobe Kathuti applied for revocation of grant in this case in November 2009 while he had already sub-divided his two acre portion he got through the grant he was challenging and sold out some plots to some of the applicants. It was dishonest of Mwobe Kathuti to pursue revocation of the grant knowing that he and his co-beneficiary (1<sup>st</sup> respondent) had already sold part of their inheritance to 3<sup>rd</sup> parties. His son the 2<sup>nd</sup> respondent was to come on board after the death of his father and proceed with the matter also with full knowledge that the property L.R. Ngariama/Thirikwa/138 no longer existed.

21. The undisputed issues lead me to the conclusion that the court orders and directions in the ruling of Ong'udi, J. delivered on 19/01/2012 were not complied with. When the 2<sup>nd</sup> respondent's father died, the 2<sup>nd</sup> respondent applied to be substituted as a co-administrator in place of the deceased Mwobe Kathuti in his application dated 3/02/2015, the application was allowed and he joined the 1<sup>st</sup> respondent as a co-administrator.

22. The 2<sup>nd</sup> respondent/co-administrator proceeded to apply for confirmation of grant with no objection from the 1<sup>st</sup> respondent and bequeathed to himself the non-existent parcel L.R. Ngariama/Thirikwa/138. It is not known how the land registry cancelled the applicant's titles and registered the land in the name of the 2<sup>nd</sup> respondent.

23. It is important to note that the fact that the 1<sup>st</sup> respondent was the son of the deceased was never in dispute even in the Kerugoya case. The 2<sup>nd</sup> respondent's father claimed to have paid a loan for the deceased with Barclays Bank and was given land which he had occupied since 1957. These are some of the issues that the court directed they be resolved during the confirmation of the grant.

24. The 2<sup>nd</sup> respondent then proceeded to obtain orders that the Deputy Registrar executes all the documents for the implementation of the grant. The 2<sup>nd</sup> respondent also applied to amend the grant without disclosing to the court the status of the land win question. He obtained an amended grant dated 20/12/2012.

25. The record shows that the letters of administration intestate issued to the respondents jointly was substituted with another one dated 8/06/2015 without a court order. This was most likely designed to facilitate the 2<sup>nd</sup> respondent to execute the grant without involving the 1<sup>st</sup> respondent whom he had portrayed as having lost interest in the case.

26. All the affidavits of service filed in court purporting that service had been effected on the 1<sup>st</sup> respondent indicate that he was served but he declined to sign. This makes the service questionable and casts doubt on whether the 1<sup>st</sup> respondent was ever served with the court papers.

27. I am of the considered opinion that the applicants have satisfied the court that the respondents obtained confirmation of the grant in this case without complying with the court orders and directions issued on 19/01/2012. The amendment of the grant was also obtained by the 2<sup>nd</sup> respondent fraudulently in that he did not involve the applicants and his co-administrator Anthony Ngaruri.

28. It has also been established that both respondents concealed facts material to the case to the court that revoked the grant and more specifically that the subject matter L.R. Ngariama/Thirikwa/138 was non-existent.

29. It goes without saying that if the court was aware of those facts, the honourable Judge would not have granted the orders for revocation and subsequent confirmation of grant. Courts do not make orders in vain unless misled by unscrupulous parties like it happened in this case.

30. The amendment of the grant and subsequent procuring of a fresh letter of administration intestate in the name of one administrator instead of those of the two respondents was influenced by fraudulent intentions on the part of the 1<sup>st</sup> respondent.

31. The proceedings in this succession case were conducted and orders issued without disclosure of material facts and this falls within the purview of Section 76 of the Law of Succession Act.

32. I find the application merited and allow it as prayed. The grant issued to the respondents confirmed on 20/12/2012 and amended on 19/05/2015 is hereby revoked.

33. The respondents to meet the costs of this application.

**DELIVERED, DATED AND SIGNED AT EMBU THIS 28TH DAY OF NOVEMBER, 2016.**

**F. MUCHEMI**

**J U D G E**

**In the presence of:-**

**Ms. Muthoni for Abubakar for the Applicant**

**Both respondents present**