



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

SUCC NO. 26 OF 2006

IN THE MATTER OF THE ESTATE OF M'IKIRUJA M'ANJURI (DECEASED)

JULIUS NYAMU NKIRUTA.....PETITIONER

VERSUS

STEPHEN MUTAI M'IMANYARA

HONESTY KANYUA MANYARA.....RESPONDENTS

R U L I N G

1. The applicant JULIUS NYAMU NKIRUTA by summons for revocation of grant dated 18th December, 2013 pursuant to Section 76 of the Law of Succession Act seeks the following orders:-

- i. ***That this honourable court be pleased to revoke and/or annul the grant of representation issued to Julius Nyamu Nkiruta on 25th September, 2013 in relation to the estate of M'Ikiruja M'Anjuri(deceased).***
- ii. ***That costs of this application be in the cause.***

2. The application is based on the grounds on the face of the application inter alia; that the proceedings to obtain the grant were defective in substance, and that the grant was obtained by means of untrue allegation fact essential in point of law to justify the grant. The application is further supported by the affidavit of the applicant dated 18th December, 2013.

3. The applicant in his affidavit dated 18th December, 2013 avers that the original petitioner was his brother one Josphat Kithure(deceased;)that he is now a petitioner through an application to rectify the grant and that in his capacity as an administrator he came across one person by the name Stephen Mutai M'Imanyara a purported beneficiary to about 80 acres, who on enquiring discovered that his brother had sold the said parcel to him in 2005 when his brother was not a family legal representative nor an administrator of the deceased estate. That there was no consent from other family members.

4. The application based on the above grounds seeks revocation of the grant in as far as the 80 acres going to Stephen Mutai M'Imanyara is concerned as the estate is yet to be distributed.

5. The respondents are opposed to the petitioner's application and have in their opposition filed a replying affidavit. The respondents have deponed as follows;- that the applicant is a dishonest applicant and the application is not merited; that the applicant is aware of the purchase of the land; taking of possession by

the respondents; that the respondent financed the cause and application for appointment of the applicant as the administrator of the deceased estate; that all beneficiaries appeared before Chief who issued a letter to facilitate the filing of this case and that all members of the family are not opposed to the sale of the land.

6. That both counsel sought directions that this application be determined by way of written submissions. The applicant filed her submissions on 22/1/2015 whereas the respondents filed theirs on 11th March, 2015. The court has considered the pleadings by both the parties and their counsel opposing positions. That from the pleadings the issue for determination is whether the applicant has satisfied the grounds to warrant revocation of the grant issued in this cause? That whether the petitioner/administrator can seek revocation of his/her confirmed grant? Whether grant can partially be revoked?

7. The grant in this cause was confirmed on 17th March, 2008. The applicant filed an application for substitution on 17th September, 20013 and sought redistribution of the deceased estate in terms of paragraph 7 of the supporting affidavit. In the grounds on the face of the application he partly stated that the proposed alteration and amendment will not prejudice any dependent as the heirs will get their shares. The applicant under paragraph 8 of his supportive affidavit dated 16th September, 2013 prayed the state be distributed as follows:-

A. L.R NO.ABOTHUGUCHI/L-KIIJA/112

i. CECILIA GATABI SABASTIAN AND LIZA KENDI(Minor)	2 acres jointly
ii. JULIUS NYAMU NKIRUTA to hold in trust For MICHAEL JOSPHAT	2 Acres
iii. JULIUS NYAMU NKIRUTA to hold in trust for ERIC MUKUNDI	2 ACRES
iv. ANGELO MURUBI	6 ACRES
v. STEPHEN MUTAI M'IMANYARA	80 ACRES
vi. JOHN MURUNGI	3 ACRES
vii. JULIUS NKIRUTA	NYAMU BALANCE

8. I find the same scheme of distribution is similar to the one which had been put forward by the applicant's late brother in his application for confirmation of grant in application dated 19th July, 2007 and confirmed on 17th March, 2008.

9. The applicant in seeking revocation of grant issued to himself on 25th September, 2013 relied on provisions of Section 76 of the Law of Succession Act which provides:-

“76. 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-“

10. The applicant alleges the pleadings to obtain the grant were defective in substance and was obtained by means of untrue allegations of fact essential in point of law to justify the grant. The applicant was the applicant in the application dated 16^h September, 2013.

11. In the instant application the applicant avers that upon successful substitution and on becoming an administrator he came across one person by the names Stephen Mutai M'Imanyara a purported

beneficiary to about 80 acres. He further stated upon inquiry he learnt his late brother had purportedly sold the land through his wife one Honestly Kanyua Manyara as per sale agreement annexed and marked "JNN2 in 2005 when the deceased was not a family legal representative nor an administrator. The applicant sought for an order of revocation in as far as 80 acres going to Stephen Mutai M'Manyara.

12. The applicant in the instant application is not challenging the confirmation of grant dated 17th March, 2008 but that of 25th September, 2013. The court record reveals that in the application dated 19th July, 2007 for confirmation of grant of Stephen Mutai M'Manyara was to get 80 acres as a buyer amongst the two other buyers. That consent to the confirmation of grant dated 18th January, 2007 was executed by the beneficiaries including the present applicant. The chief's letter had also included the purchaser amongst the list of buyers. The applicant in his application of 16th September, 2013 included the respondent amongst the people entitled to a share of the deceased estate.

13. The applicant I find from all the above was aware of the sale of 80 acres to the 1st respondent by the 2nd respondent and indeed consented to the transfer of the 80 acres. There is no demonstration or allegation that the consent was obtained fraudulently. The applicants' action and that of other dependants by having no objection at the time of the confirmation of the grant and rectification of the grant I find regularized the sale of 80 acres to the 1st respondent. The grounds relied upon by the applicant are therefore negated by his own consent and the contents of his affidavit dated 16th September, 2013. This court cannot set an appeal on a decision of parallel court. The applicant is aggrieved ought to have appealed against the confirmation of the grant.

14. Section 76 of the Law of Succession Act provides:-

"76. 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-"

15. In my view **Section 76 of the Law of Succession Act** is amenable to any interested party who may want to have grant to be revoked or annulled at any time whether confirmed or not based on the grounds set out thereunder or the court can decide to do so on its own motion. I therefore find that petitioner/administrator herein has no recourse to seek revocation or annulment of his own grant but if anything the petitioner/administrator can move court by way of rectification or amendment on matters provided for such action in the relevant Act or file appeal to higher court or file a separate suit in a different court based on claim for fraud or whatever he deems fit to recover the 80 acres or damages.

16. The applicant in my view is further seeking partial revocation or annulment of the grant. This payer in my view is not amenable to the applicant in the Law of Succession Act as the Act do not provide for partial revocation or annulment of the grant.

17. The application raises serious issues affecting a protection of right to property under Article 40(1) and (b), 2(a) of the Constitution of Kenya 2010 provides:-

40. (1) Subject to Article 65, every person has the right, either individually or in association with others, to acquire and own property-

(a) of any description; and

Further Article 50(1) of the Constitution of Kenya, 2010 provides:-

50. (1) Every person has the right to have any dispute that can be resolved by the application of law decided in a fair and public hearing before a court or, if appropriate, another independent and impartial tribunal or body.

18. This court confirmed the grant it issued and later on rectified the grant on applicant's application, who

now seeks the grant issued to him revoked. I have considered the application and in my view and in view of the grounds advanced by the applicant, he cannot seek the revocation or annulment of a grant issued to him. I am of the view that the only avenue open to the applicant is either to seek amendment or rectification of the grant or appeal or file a separate suit elsewhere on the grounds of fraud otherwise I am of the view that the application is not brought to court in good faith.

19. The upshot is that the applicant's application is not meritorious and the same is dismissed.

20. Each party to bear its own costs.

DATED, SIGNED AND DELIVERED AT MERU THIS 30TH DAY OF APRIL, 2015.

J. A. MAKAU

JUDGE

DELIVERED IN OPEN COURT IN THE PRESENCE OF:

1. *MR. Mwanzia for the applicant/petitioner*

2. *Mr. Gatari Ringera for respondent*

3. *C/clerk Penina/Mwenda*

J. A. MAKAU

JUDGE