



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MURANG'A

SUCCESSION CAUSE NO 1118 OF 2013

(FORMERLY NAIROBI HC SUCCESSION CAUSE NO 3004 OF 2002)

IN THE MATTER OF THE ESTATE OF GITAU GACUI, DECEASED

MARGARET NDUTA.....APPLICANT

VERSUS

NANCY MUMBI GITAU.....ADMINISTRATOR/RESPONDENT

J U D G M E N T

1. This judgment concerns the summons dated 29th November 2002 filed herein for revocation of grant. The grant sought to be revoked was issued to the Administrator/Respondent **Nancy Mumbi Gitau** on 21st October 1993 in **Murang'a RM Succession Cause No 104 of 1993** in respect of the estate of the Deceased herein **Gitau Gacui**. It appears that the grant was confirmed; however, neither a copy of the grant itself nor a copy of the certificate of confirmation of grant is annexed to the affidavit sworn in support of the summons for revocation.
2. The main ground for seeking revocation stated in the summons is that the grant was fraudulently obtained. But the alleged fraud does not come out clearly in the supporting affidavit.
3. I cannot find on the record of the court any replying affidavit sworn specifically in answer to the summons for revocation of grant. What I have seen in the record is a replying affidavit sworn by the Respondent's advocate apparently in answer to an application for dismissal of the summons of revocation of grant for want of prosecution (summons dated 15/05/2008). That application was marked as "overtaken by events" on 07/07/2009.
4. I must point out that this matter was filed in Nairobi on 03/12/2002. It appears that on 18/05/2009 the court at Nairobi directed the learned counsels for the parties to file and exchange written submissions, and to highlight the same on 16/06/2009. The Respondent filed her submissions on 16/06/2009 while the Applicant filed hers on 17/07/2009. For some reason the submissions were never highlighted, and no judgment was prepared at Nairobi. By an order entered on 09/10/2013 the matter was transferred to this court. And that is how it has finally ended up on my desk for preparation of judgment. The advocates did not highlight their submissions before me.
5. I have read the respective submissions of the parties. Those submissions contain many statements of fact that are not founded on any affidavits filed before the court.
6. The Applicant's case as stated in her submissions filed on 17/07/2009 (and which case constitutes the

alleged fraud in the summons for revocation) is as follows. Her mother, **Annah Wanjiru Ng'ang'a** (who died on 26/10/1981) had many years back bought from the Deceased **Gitau Gacui** the parcel of land that was alleged to constitute his estate, L. R. Loc 7/Gakoigo/868. The necessary land control consent was obtained and the land duly registered in her name, and a land certificate issued in her name in October 1974; that Annah Wanjiru Ng'ang'a and her children (including the Applicant) took possession of and occupied the land, and developed it by constructing thereon permanent stone buildings; that they have been in such possession and occupation to date; that "through corruption at the Lands Office Murang'a the name of Gitau Gacui was superimposed in the Green Card and placed above the name of Anna Wanjiru Ng'ang'a on the same line as proprietors in common"; that this insertion of the name of Gitau Gacui in the Green Card was a clear forgery; and that therefore the title deed subsequently issued on 29/01/1997 in the joint names of the Respondent and the Applicant's mother Annah Wanjiru Ng'ang'a (apparently pursuant to the confirmed grant in Murang'a RM Succession Cause No 104 of 1993 now sought to be revoked) was wrongly issued.

7. The Respondent's case on the other hand as stated in her submissions filed on 16/06/2009 is that the land L R Loc 7/Gakoigo/868 was originally registered in the name of the Deceased Gitau Gacui as sole proprietor; that on 19/01/1973 the Deceased and Annah Wanjiru Ng'ang'a were then registered as proprietors in common of the land in the ratio of 67/87 (Gitau Gacui) and 20/87 (Annah Wanjiru Ng'ang'a), and a new land certificate issued in the names of them both; that upon the death of Gitau Gacui his widow (the Respondent) petitioned for administration of his estate vide Murang'a RM Succession Cause No 104 of 1993; that his estate included his 67/87 interest in parcel Loc 7/Gakoigo/868; and that through the confirmed grant now sought to be revoked, she (Respondent) inherited only the Deceased's 67/87 interest in the land, the rest (20/87) remaining for the benefit of the heirs of Annah Wanjiru Ng'ang'a.

8. The Respondent has also stated in her submissions that the Applicant and her siblings in fact participated in the proceedings of Murang'a RM Succession Cause No 104 of 1993, and that the same allegations of fraud were made there, upon which the court directed the police to investigate the alleged fraud; and that the report filed by the police did not disclose any fraud.

9. Two main issues are disclosed by the parties' submissions. The first is **whether Annah Wanjiru Ng'ang'a bought from the Deceased Gitau Gacui the entire parcel Loc 7/Gakoigo/868 or only a small portion thereof?** The second issue is **whether the name of Gitau Gacui was later and fraudulently re-introduced into the register of the parcel of land as a co-proprietor in common with Annah Wanjiru Ng'ang'a** with an even greater share thereof of the land? These two issues long predated the issuance and confirmation of grant in Murang'a RM Succession Cause No 104 of 1993.

10. The said issues are basically civil-dispute issues that are not amenable to resolution in succession proceedings, which are limited by nature. They cannot be resolved in the present summons for revocation of grant. They are issues that require substantive civil proceedings whose outcome may or may not then affect the grant now sought to be revoked.

11. I have already pointed out that the respective submissions of the parties are based upon facts that have not been properly or at all established before the court. I may also point out that even the original lower court record in Murang'a RM succession Cause No 104 of 1993 is not before this court, and may in fact no longer be available given the passage of time; closed court files are periodically destroyed.

12. In the circumstances, I must refuse the summons dated 29/11/2002 for revocation of grant. It is dismissed. Parties shall bear their own costs. It is so ordered.

DATED, SIGNED AT MURANG'A THIS 23RD DAY OF JULY 2015

H P G WAWERU

JUDGE

DELIVERED AT MURANG'A THIS 24TH DAY OF JULY 2015