



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KISII
SUCCESSION CAUSE NO.638 OF 2012

IN THE MATTER OF THE ESTATE OF ORONDO MISIANI – DECEASED

AND

IN THE MATTER OF REVOCATION OF GRANT OF LETTERS OF ADMINISTRATION

AND

IN THE MATTER OF LAND PARCEL NO.SOUTH MUGIRANGO/NYATAARO/617

BETWEEN

ABUGA BICHANGA MISIANI - 1ST APPLICANT

DAVID MAUTI NYAMEYIO - 2ND APPLICANT

VERSUS

WILFRED NYAMBEGO NYAMBOKE - RESPONDENT

RULING

1. The Respondent herein, **WILFRED NYAMBEGO NYAMBOKE** on 15th October 2012 petitioned the court for a grant of letters of administration intestate in respect to the estate of one **ORONDI MISIANI** – Deceased. In the said petition, the respondent indicated that he was a son to the deceased and that the other beneficiaries were:

1. **Esther Moraa Ondeyo** - **Widow**
2. **Mary Kwamboka Owuor** - **Daughter**

2. On 28th January 2014, the Petitioner/Respondent applied to amend his affidavit in which he corrected the relationship between the deceased and Esther Moraa Ondeyo to be that of father and daughter instead of husband and widow as earlier indicated in the petition for grant of letters of administration.

3. Grant of letters of administration intestate was made to the petitioner/respondent on 3rd June 2013 and the same was confirmed on 19th September 2014. In the certificate of confirmation of grant, the whole of LR. No. **SOUTH MUGIRANGO/NYATAARO/617** was to be registered in the name of the respondent.

4. Prior to the confirmation of the grant, the court on 20th June 2014 ordered the petitioner to file a supplementary affidavit in which he was to annex a copy of official search of the deceased's property being **LR.SOUTH MUGIRANGO/NYATAARO/617**.
5. On 19th September 2014, the same day that the grant was confirmed, the Petitioner/respondent filed a copy of official search in respect to LR. No.**MAJOGÉ/MAGENCHE/617** belonging to one **NYATUNANGE OKEMWA**.
6. By an application dated 24th March 2015, the applicants herein **ABUGA BICHANGA MISIANI** and **DAVID MAUTI NYAMEYIO** filed a Chamber Summons application for revocation or annulment of grant under **Section 76** of the **Law of Succession Act** as follows:-
 1. **Spent.**
 2. **Spent.**
 3. **THAT pending the hearing and determination of the Chamber Summons herein the honourable Court be pleased to grant an order in inhibition inhibiting any transaction, sale charge, and any other dealing with land parcel number South Mugirango/Nyataaro/617 in any manner whatsoever and or howsoever.**
 4. **THAT the certificate of confirmation of the grant issued to the respondent herein on 19th September 2013 in the succession cause be revoked.**
 5. **THAT the register in respect of land parcel number South Mugirango/Nyataaro/617 be rectified and the aforesaid title now unlawfully transferred and registered in the names of the Respondent be rescinded and or revoked and the original suit land to revert to the names of the deceased.**
 6. **THAT costs of this application be borne by the Respondent.**
 7. **THAT such further and or other orders be made as this honourable court may deem just, fit and or expedient.**
7. The said application was supported by the 1st applicant's affidavit sworn on 24th March 2015. The grounds upon which the said application was sought were that the grant was obtained by fraud, concealment of material facts and deliberate misrepresentation.
8. The applicants contended that the respondent was not a son to the deceased and thus the respondent was a dishonest person who did not disclose that the deceased died a bachelor without any child. The applicants prayed for the revocation of grant in the interest of justice stating that they were the deceased's only surviving relatives.
9. On 26th March, 2015, the applicants obtained Interim Orders of injunction to restrain the respondent from selling, disposing off and appropriating the assets of the deceased and more specifically LR. No.South Mugirango/617 pending the hearing and determination of this application.
10. The respondent did not file any replying affidavit in opposition to the applicants' application for revocation of grant and neither did the respondent attend court on 13th October 2015 when the instant application came up for hearing despite having been served with the said application, Interim Orders and a hearing notice.
11. The applicants through their advocate Mr. Omwega therefore proceeded with this instant application in the absence of the respondent. Despite the fact that the instant application was not opposed, this court is still under an obligation to consider the merits of the application and make a finding on merit taking into account the affidavit of the applicant and the annexures attached thereto.
12. In the applicants' affidavit, in support of the application, the 1st applicant has alleged that the deceased was his uncle, he owned LR.No. South Mugirango/Nyataaro/617 and that the deceased

died in 1946 and not 1972 as alleged by the respondent in the petition.

13. I have perused the applicants' instant application and I note that the same has not been supported by any document of proof of any of the allegations made that would satisfy me that, indeed, the grant was obtained by fraud and false representation. The applicants have not exhibited any document of proof to show or confirm their alleged relationship to the deceased, or proof that the deceased owned the land in question being South Mugirango/Nyataaro/617.
14. Furthermore, the applicants have not exhibited any document to this court i.e. death certificate or burial permit, to show that the deceased died in 1946 and not 1972. As matters stand now, this court is being asked to revoke a grant based on mere allegations that have not been supported by any tangible evidence. Of critical importance is the fact that the actual ownership of the disputed land – South Mugirango/Nyataaro/617 was not established by either the applicants herein or the petitioner in his application for confirmation of grant as I have noted hereinabove that the petitioner/respondent filed a search certificate in respect to a completely different parcel of land No. MAJOGGE/MAGENCHE/617 belonging to a totally different person by the name called NYATUNANGE OKEMWA.
15. From the above observations, it is quite clear to me that my predecessor judge, who handled this matter, was misled to believe that the certificate of official search filed by the petitioner on 19th September 2014 was in respect to the deceased's land that was the subject of this Succession Cause.
16. From the above foregoing observations, neither the respondent nor the applicants have furnished proof to this court that the deceased owned LR. No. South Mugirango/Nyataaro/617 or any land at all that could be the subject of the Succession Cause or the objection proceedings filed by the applicants herein.
17. The upshot of my ruling is that the applicants have not satisfied me that their application meets the threshold of for the grant of orders for revocation and/or annulment of grant.
18. Consequently, the Interim Orders granted to the applicant herein on 26th March 2015 are hereby vacated.
19. The said application dated 24th March, 2015 is therefore dismissed with no orders as to costs.

Dated, signed and delivered in open court this 11th day of November, 2015

HON. W. OKWANY

JUDGE

In the presence of:

- M/S Nyambati for Omwenga for the Applicants
- N/A for the Respondents
- Mr. Ogega: court clerk