



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 235 OF 2010

AND

**IN THE MATTER OF THE ESTATE OF RUGUI NGIRITA ALIAS NGUBI NGIRITA
(DECEASED)**

AND

GEOFFREY KIMANI KIRUNYU.....APPLICANT

VERSUS

GIDEON MUCHAI KAMAU..... 1ST OBJECTOR

JOHN KINYANJUI2ND OBJECTOR

PAUL WAWERU.....3RD OBJECTOR

RULING

1. The application before court is a Summons dated 20th March, 2012 and taken out under Rules 49 and 73 of the Probate and Administration Rules of the Law of Succession Act, Cap, 160. The Applicant seeks orders that the order made by this court on 8th March, 2011 be vacated, that the Land Registrar, Kiambu, be ordered to cancel the two entries in the register entered as No. 21 dated 18th November, 2009 and No. 22 dated the 24th March, 2010 respectively and that the costs of the application be awarded to the Applicant.
2. The application is premised on the averments in the affidavit of the applicant, Geoffrey Kimani Kirunyu, sworn on the even date. The application is based on the grounds set out on the face of the application as well as in the affidavit in support. These include the allegations that the applicants have shown by conduct that they do not wish to continue with their application dated 9th February, 2010; that the restriction entry numbers 21 and 22 in the register entered on 18th November, 2009 and 24th March, 2010 respectively do not serve any useful purpose; and that in view of the provisions of Section 93 of the Law of Succession Act Cap, 160, and Sections 27 and 28 and 143 (2) of the Registered Land Act Cap, 300 the Applicant's title cannot not be subject to any challenge.
3. The Objectors, who are the trustees of the Christian Holy Ghost Church of East Africa – Kigumo, opposed the application and filed in a replying affidavit on 8th May, 2012, sworn by Gideon Muchai Kamau, who is named in these proceedings as the 1st Objector. He avers that the church

purchased Komothai/Kiratina/T.92 – Kigumo from the deceased on or about 1963; that upon payment of the purchase price the church took possession of the parcel No. Komothai/Kiratina/T.92 and has been in occupation thereof to-date. He further avers that the deceased died on 28th March, 1965 before he could transfer the land in question to church; he further avers that after the deceased's death his family petitioned for grant of letters of administration in respect of his estate but did not include parcel number Komothai/Kiratina/T.92 as part of his estate as they were aware he had already sold it to the church. He further avers that on or about 9th August 1995, one John Njoroge Ngugi fraudulently petitioned, obtained the letters of administration of the deceased's estate vide Kiambu Principal Magistrate Succession Cause No. 493 of 1995, and that the said petitioner fraudulently misrepresented to the court that the deceased died at the Aga Khan Hospital on 10th March, 1990, and that the said petitioner fraudulently misrepresented to the court that the deceased hailed from Gikuni Location, Lower Kabete. It was further his averment that the said petitioner fraudulently misrepresented to the court that he was a beneficiary and son of the deceased, yet he is a stranger to the deceased estate.

4. He further states that on becoming aware of the extent of the fraud, the church filed summons for revocation and annulment of the grant issued to the said John Njoroge Ngugi vide the Summons for revocation dated 9th February, 2010. The said Summons for revocation is still pending in Court, and stands a high chance of success. On 19th February, 2010 the Objectors filed a Chamber Summons application seeking a preservative order in respect of Komothai/Kiratina/T.92, where the said application was heard *ex parte* and orders granted on 22nd February, 2010. He states that the application dated 19th February, 2010 has not been dispensed with as the same is still pending.
5. I have carefully considered the application, the affidavits on record as well as the submissions. The Applicant herein has asked this court to vacate its order made on 8th March, 2011. The Applicant's main contention is that the objectors have shown by conduct that they have no wish to continue with their application dated 9th February, 2010. According to the Applicant, the restriction entry nos. 21 and 22 entered in the register on 18th November, 2009 and 24th March, 2010 do not serve any useful purpose.
6. But the Objectors herein who are the Trustees of Christian Holy Ghost Church of East Africa – Kigumo, have a different view, and they hold the position that the said church purchased Land Parcel Komothai/Kiratina/T. 92 – Kigumo from the deceased on or about 1963 and that upon payment of the purchase price the Church took possession of the said parcel, and has been in occupation thereof to-date.
7. I note that the Objectors have contended that the said parcel of land was fraudulently transferred to the Applicant, and as a result they filed a Chamber Summons application seeking a preservative order in respect of the said parcel. Further, as has been stated in the Replying affidavit, the Objectors due to the alleged fraud filed Summons for Revocation and Annulment of the Grant issued to the said John Ngugi. However, it is imperative to note that the said Summons for Revocation of Grant has not been heard and determined. In the present application, it is not for this court to look at the merits of the said summons for revocation, but this court is alive to the fact that preservative orders were issued in respect of the said parcel of land.
8. The Applicant's main contention as I understand it is that the said parcel Komothai/Kiratina/T.92 was rightfully transferred to him and is not a ground for revocation of the said grant and now wants the court to order the removal of the restrictions number 21 dated 18th November, 2009 and number 22 dated 24th March, 2010 in the register to enable the Applicant to enjoy the ownership of the said parcel.
9. This court holds a different position. In view of the fact that that the summons for revocation of grant is still pending and has not been heard and determined and given the fact that the summons for revocation touches on the said parcel of land, it is my considered opinion that the said land cannot be removed from the said application. It would not be proper for the Applicant to contend

that the restrictions registered against the said parcel do not serve any useful purpose.

10. Rule 73 of the Probate and Administration Rules which the Applicant has relied enjoins this court to make such orders as may be necessary for the ends of justice. The ends of justice in the instant application demand that that the Objectors application for revocation of the said grant be heard and determined first. In view of the foregoing, this court holds that the application lacks merit and is accordingly dismissed.

DATED, SIGNED and DELIVERED at NAIROBI this 25th DAY OF April, 2014.

W. MUSYOKA

JUDGE

In the presence of Mr. Mwangi for Mr. Kamonde advocate for the applicants.

No appearance for the objectors.