



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
SUCCESSION CAUSE NO. 2542 OF 2010
IN THE MATTER OF THE T N N (DECEASED)

RULING

1. The deceased herein, T N N, died on 11th February 2005. There is a letter on record from the Chief of Nyakio Location, Kinangop District, dated 18th November 2010, indicating that she was survived by a widower, H M K, and a son, B K M.
2. Representation to her estate was sought by the widower and a sister in law of the deceased by a petition lodged in this cause on 22nd December 2010. A grant of letters of administration intestate was duly made to the petitioners on 8th June 2011.
3. The said grant was confirmed on 13th December 2011 *vide* an application in that behalf dated 30th September 2011. The deceased was said to have been survived by two individuals, being her widower, H M K, and her son B K M. She was said to have died possessed of three assets, namely: Nyandarua/Njabini / **[particulars withheld]**, Nyandarua/Njabini/ **[particulars withheld]** and money lying in account with the Barclays Bank of Kenya Ltd, Ruaraka Branch.
5. The terms of the orders made by G.B.M. Kariuki K. on 13th December 2011 the confirmation application dated 30th September 2011 are as follows

“I have perused the application for the confirmation of the grant. I am satisfied that the widower may hold the land in trust for the son of the deceased who was sired by him.

Accordingly I confirm the grant on the terms that the parcels of land shall be held in trust for the minor child by the two administrators. The money in the Barclays Bank Ruaraka Branch shall be used by the administrators for the education and upkeep of the minor child B K M.”

6. The said order clearly created a trust over both the landed assets and the cash in the bank. However, a rectified certificate of grant was issued on 13th December 2011, which did not confirm will the terms of the order by G.B.M. Kariuki J. of even date. According to the certificate of 13th December 2011, the landed property devolved absolutely upon the widower with a trust being created over the money in the bank. To my mind the so called rectified certificate of confirmation of grant dated 13th December 2011 and signed by Njagi J. was a forgery, for the only order made on 13th December 2011 confirmed the grant and no orders were made on that day to rectify the certificate of confirmation of grant.
7. The application that I am called upon to determine is dated 11th February 2013. It is brought by the

mother and brother of the deceased. They want to be appointed as co-administrators of the estate. The supplementary orders are that the administrators be restrained from disposing of the landed property or dealing with it in a manner which is prejudicial to the interest of the minor. They would also like the administrators to furnish accounts with respect to the money in the Barclays Bank account. They brought the application principally to safeguard the interests of the minor.

8. The application was served on the widower on 14th February 2014 and there is an affidavit of service on record filed in court on 20th March 2013.

9. There are interim orders on record restraining transfer of any of the assets which make up the estate of the deceased pending the hearing and disposal of the application for revocation of grant. These orders were made on 20th March 2013 by Kimaru J.

10. The widower has filed a replying affidavit sworn on 4th July 2013. He basically avers to be the widower of the deceased and the father of the minor beneficiary. He asserts to be the sole beneficiary who can effectively administrate the estate of the deceased. He denies the rest of the allegations made in the affidavit of 11th February 2013. He asserts that the lands have since been transferred to himself.

11. To this reply the mother of the deceased filed a further affidavit sworn on 21st August 2013. She asserts that the assets were devolved to the administrators in trust and she annexes to her affidavit a certificate of confirmation of grant dated 13th December 2011 which conforms to the orders made by GBM Kariuki J. on that date. She asserts that the widower has not administered the estate as per the court orders. She also asserts that an account has not been provided with respect to the cash held at the Barclays Bank of Kenya Ltd. She also asserts that the widower has been attempting to dispose of the two parcels of land.

12. I had directed on 31st July 2013 that the two parties do file written submissions within 30 days and placed the matter for mention on 18th September 2013 for further directions. By 18th September 2013 the parties had not filed their submissions and I proceeded to fix the matter for ruling.

13. I have carefully gone through the documents filed herein. I have noted that confirmation of grant was ordered on 13th December 2011 by GBM Kariuki J. and following that order two different sets of certificates of confirmation of grant were issued and signed on 13th December 2011. There is the original document titled "*Rectified Certificate of Confirmation of Grant*" and a photocopy of a document titled "*Certificate of Confirmation of Grant*" annexed to the affidavit of the mother of the deceased sworn on 21st August 2013. Of the true documents, it is the photocopy which bears the two transcript of the orders made by GBM Kariuki J. on 13th December 2011. This means that the original document in the court file titled the "*Rectified Certificate of Confirmation of Court*" is not a true transcript of the said orders and is in fact a forgery.

14. I have noted from the record a certificate of official search dated 19th February 2012 on Nyandarua/Njabini/ **[particulars withheld]**, which shows that this property was transferred on 24th May 2012 to H M K and a title deed to that effect issued to him.

15. I have also noted from the record an agreement of sale of Nyandarua/Njabini / **[particulars withheld]**]between H M K and P M M. The date of the agreement is 30th January 2013. There is also a certificate of official search dated 9th February 2013, indicating that the said Nyandarua/Njabini / **[particulars withheld]** was on 24th May 2012 transferred to H M K and a title deed to that effect issued to him.

16. The order by GBM Kariuki J. of 13th December 2011 stated that the widower was to hold the land in trust for the minor. That being the case the said land could not possibly be transferred to the said widower as absolute proprietor, and could not be used to a third party without an order of the court. The

acts of the widower of having the two parcels of land transferred to his name as absolute proprietor were contrary to the terms of the confirmation order of 13th December 2011. The sale transaction was equally contrary to the law

17. A trustee stands in a fiduciary position with regard to trust property and the beneficiaries. He holds the property for the benefit of the beneficiaries rather than for his own benefit. He should not act in a manner which prejudices the interest of the beneficiaries. In this case the trustee has clearly acted against the interest of the beneficiary by causing the trust property to be registered in his own name as absolute proprietor and for selling trust property without recourse to the court which constituted him trustee over the said property.

18. I also find that there has been exercise of fraud in the procurement of the so called “*Rectified Certificate of Confirmation of Grant*” dated 13th December 2011 which, no doubt, was used by the widower to secure the transfers referred to above.

19. On the whole I find merit in the application dated 11th February 2013. In the exercise of the powers granted upon me under *Sections 66 and 76* of the Laws of Succession Act, I hereby make the following orders:-

1. That the grant of letters of administration intestate made herein on 8th June 2011 to H M K and R W K is hereby revoked;
2. That I appoint M M N and P N N administrators of the estate of T N N, and a grant of letters of administration intestate shall issue to them accordingly;
3. That I hereby cancel the two certificates of confirmation of grant dated 13th December 2011 and signed by Njagi J, one titled “*Certificate of Confirmation of Grant*” and the other “*Rectified Certificate of Confirmation of Grant*.”
4. That the transfers effected on titles numbers Nyambura/Njambini/***[particulars withheld]*** and ***[particulars withheld]*** on 24th May 2012 in favour of H M M are hereby annulled and the title deeds issued thereon are hereby revoked;
5. That the Land Registrar for the time being responsible for Nyandarua County is hereby directed to give effect to the order in (4) above;
6. That the confirmation orders made on 13th December 2011 are hereby reviewed to read that the landed property shall vest in the names of the new administrators M M N and P N N in trust for B K M until the minor attains the age of majority, while the money in the Bank shall devolve upon the new administrators to be utilized for the minor’s education and upkeep;
7. That H M K and R W K shall within 30 days of the date of this ruling give a full account of their handling of the moneys held in the deceased’s bank account held at the Barclays Bank of Kenya, Ruaraka Branch;
8. That the Deputy Registrar shall investigate and give a report to court of the circumstances which led to the issuance of two different sets of certificates of confirmation of grant both dated 13th December 2011 and both signed by Njagi J;
9. That a copy of this ruling shall be availed to the Director of Public Prosecutions to consider the possibility of initiating criminal charges against the persons responsible for (8) above;
10. That the matter shall be mentioned after thirty (30) days for the purpose of monitoring compliance

with the orders made herein; and

11. That the applicants shall have costs of the application.

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

W. MUSYOKA

JUDGE

No appearance for the applicant.

No appearance for the 1st respondent.

No appearance for the 2nd respondent.