

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MILIMANI

SUCCESSION CAUSE NO. 1113 OF 2012

IN THE MATTER OF THE ESTATE OF NGUGI NJUGUNA –(DECEASED)

RULING

1. The deceased herein Ngugi Njuguna died intestate on 21st June 1959. Representation to his estate was sought on 27th an undated document dated in 1995 by Dorcas Wambui Ngugi, who described herself as the widow of the deceased and a grant of letters of administration was issued to her on 10th August 1995.
2. In the petition it was expressed that the deceased had died, intestate survived by his widow and four children. The five were Gladys Wanjiku, Charles Njuguna, James Ndaru and Hannah Njeri. He died possessed of two assets – Loc.5/Kabati/354. A letter from the chief of Gaichanjiru location dated 5th June 1995 conferred that the deceased had four children.
3. Confirmation of the said grant was sought on 12th February 1966 *vide* an application of even date. Curiously the number of survivors disclosed in the application dated 12th February 1996 were six (6) instead of the five (5) disclosed in the petition. The sixth survivor was stated to be a son named Francis Njuguna Ngugi. It was proposed that the two assets that the deceased died possessed of should devolve upon the said Francis Njuguna Ngugi.
4. An affidavit of protest was filed on 10th April 1996, sworn by Peter Muturi Gitau. He claimed the property known as Loc.5/Kabati/354 was his having bought the same from the first wife of the deceased, Wairimu Ngugi Njuguna. The sale was said to have occurred in 1964. The deceased was said to have died before the land was demarcated and registered, and that it was his first wife who caused it to be registered in his name post—humously. The protestor claims to have been in possession of the land since 1966 and since then he has developed it extensively. He asserts that he did not know of the existence of the deceased and her children until she surfaced in 1992 after she came back from the Rift Valley after the elections-related violence of that year.
5. When the confirmation application dated 10th April 1996 came up for hearing on 6th June 1996, it transpired that there was a High Court suit, being Nairobi HCCC No. 2347 of 1995, pending between the protestor and the first wife of the deceased, Wairimu Ngugi Njuguna. The application was stood over generally to await the determination of the High Court case.
6. HCCC NO. 2347 of 1995 was dismissed on 4th June 2003. An application by the protestor dated 20th February 2006 seeking the setting aside of the dismissal order was dismissed on 7th April 2006. This paved way for the striking out of the protest on 23rd March 2011. The grant was subsequently confirmed in the terms proposed in the application. A certificate of confirmation of grant was issued on 29th March 2011.
7. On 30th May 2012, the protestor moved this court by this cause in a Summons for Revocation of Grant dated 29th May 2012. He sought revocation of the grant made on 10th August 1995 and confirmed on 29th March 2011. The summons dated 29th May 2012 was predicated on the same grounds as the protest dated 10th April 1996.
8. The administrators replied to the application dated 29th May 2012 through an affidavit sworn on 6th July 2012. She asserts that the grant on record was not obtained fraudulently and that there was nothing

on record to show that the process to obtain the grant and its confirmation was defective. She further argues that the applicant's possession of the subject property was a non-issue and res-judicata as the same was placed before the High Court and the court dismissed the suit.

9. Directions were initially given on 17th December 2012 that the revocation application would be disposed of by way of viva voce evidence. The directions were later reviewed on 23rd May 2013, and it was directed that the application be canvassed by way of written submissions. Both sides thereafter filed their respective submissions. The written submissions by the applicant were filed on 2nd July 2012, while those by the respondent were filed on 22nd July 2013.

10. The law governing revocation of grants is Section 76 of the Law of Succession Act. A grant will be revoked if it is obtained by a process which is defective in substance, or by fraudulent means, or where there is non-disclosure or concealment of important matter from the court. In the instant application the applicant founds his claim on all three grounds: untrue allegations, defective process and fraud. He alleges that it was not disclosed that he was in possession of the disputed property.

11. I have carefully gone through the papers filed in Thika **SRMCSC No. 153 of 1995**, and I have not noted any defect in the process leading to the making of the grant. I have not noted any concealment of facts or misrepresentation or fraudulent allegations. It is not in dispute that the subject property – Loc.5/Kabati/345 – was at all material times registered in the name of the deceased. The court was not furnished with any court order decreasing the said property to the applicant. There was therefore no obligation on the part of the applicant to disclose the applicant as a person in possession or occupation of estate property.

12. I have carefully gone through the material placed before me in the written submissions and especially the authorities cited. I have not read anything that would aid the applicant's case. I find that the application dated 29th May 2012 is wholly without merit, and I therefore hereby dismiss the same with costs to the estate.

DATED, SIGNED and DELIVERED at NAIROBI this 16th DAY OF May 2014.

W. MUSYOKA

JUDGE

In the presence of Mr. Njuguna advocate for the petitioner.

In the presence of Mr. Ochieng advocate for the respondent.