



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NYERI
SUCCESSION CASE NO. 163 OF 2005
IN THE MATTER OF THE ESTATE OF
KAMUNGE KAGITHI..... DECEASED
AND
KIGUOYA KAMUNGE.....PETITIONER

JUDGMENT

1. The Petitioner/Respondent KIGUOYA KAMUNGE filed petition for grant of letters of administration of the estate of KAMUNGE KAGITHI and named the following beneficiaries:

- a) KIGUOYA KAMUNGE
- b) WILSON KIRIMI KAMUNGE
- c) ROSE WAIRIMU NJARAMBA
- d) JOHN WAMBUGU KAMUNGE
- e) STEPHEN MURIITHI KAMUNGE
- f) TABITHA MUTHONI KOI
- g) ELIZABETH NYARUAI JOSHUA
- h) KAGITHI KAMUNGE
- i) SULEMAN MUTERU KAMUNGE
- j) JOSEPH MWANGI KAMUNGE

2. The Petitioner named AGUTHI/GITITU/7 as the only asset of the estate and on 16th May 2008 the grant was confirmed as follows:

1. KIGUOYA KAMUNGE - 2.5 acres
2. STEPHEN MURIITHI KAMUNGE - 1.0 acres
3. KAGITHI KAMUNGE - 2.5 acres

3. On 5th April 2012 the applicant HARRISON MUHORO MWANGI filed summons for revocation or annulment of grant on the grounds that:

a) The grant was obtained fraudulently by making a false statement or concealing from court of something material to the case.

b) The grant was obtained by means of untrue allegations of a fact.

4. It was supported by the affidavit of the applicant which he deponed that the grant was confirmed without disclosing that the applicant was a bona fide purchaser for value of AGUTHI/GITITU/691 that mutation form AGUTHI/GITITU/7 which had been closed upon sub-division into AGUTHI/GITITU/690 and 691 and that he bought AGUTHI/GATITU/691 from one Lawrence Wachira Mutero in the year 2000 who was the registered owner of AGUTHI/GITITU/7.
5. It was further deponed that the applicant paid a consideration of Ksh. 360,000/- and that the vendor Lawrence Wachira Mutero stated that he had lost the original title deed and that was subsequently issued with a title deed in respect of the said land which is still registered in his name as at 27th December 2011 and that there is a pending suit land Nyeri High Court Civil Case No. 168 of 2008 which the respondent has not prosecuted.
6. In response thereto the respondent on 10th July 2012 filed a replying affidavit whereas he deponed that the applicant is not a bona fide purchaser for value of AGUTHI/GITITU/691 as the same is as a result of serious fraud which is the subject matter of Nyeri HCCC No. 168 of 2008 and that the respondent had no obligation to inform the applicant since he is a stranger to the petitioner and not a beneficiary of the estate.
7. It was deponed that as a result of grant issued and confirmed on 16th May 2008 the respondent acquired the right over his deceased father's property and that the applicant was silent on the process in which the land parcel No. AGUTHI/GITITU/7 which was registered in the name of Kamunge s/o Kagithi who died on 8th June 1980 got registered jointly between KAGITHI KAMUNGE and LAWRENCE WACHIRA MUTERO on 12th September 1995 and how subdivision was created. The respondent therefore prayed that the proceedings herein be stayed pending the hearing and determination of the Nyeri HCCC No. 168 of 2008.
8. Directions were given that the application be heard by way of affidavit evidence and written submissions which have now been filed. It was submitted by the applicant that on 30th May 1996 title number AGUTHI/GITITU/7 was closed on sub-division of AGUTHI/GITITU/690 and 691 thus filing succession cause in the year 2005 was an abuse of court process and that as at 27th December 2012 the applicant was the registered proprietor of AGUTHI/GITITU/691 which he had extensively developed.
9. It was further submitted that the respondent fraudulently obtained title No. AGUTHI/GITITU/7 which had been closed and that there is pending High Court Case No. 168 of 2008 and that succession is filed ten years of this sub-division and that the respondent is attempting to refrain the applicant from enjoying the proceeds of his labour as all the cases were filed after the applicant has purchased AGUTHI/GITITU/691 in the year 2000 for valuable consideration.
10. On behalf of the respondent it was submitted that the applicant was aware that he had bought the land parcel AGUTHI/GITITU/691 which had been fraudulently obtained by Lawrence Wachira Mutero now deceased and that upon grant of letters of administration he filed Nyeri High court Civil case No. 169 of 2002 seeking the mutation of the submission.
11. It was deponed that the deceased had died on 8th June 1980 and that the transfer was done on 12th September 1995.
12. From the submission and pleadings herein the following facts are undisputed.

1) Kamunge Kagithi died on 8th June 1980 and certificate in his favour was issued on 12th January 1973.

2) On 12th September 1995 certificate was issued to Lawrence Wachira Mutero and Kigithi Kamunge Kagithi and on 31st May 1996 title closed on petition No. 690/691

3) The application for grant herein was made without the required introductory letter

from the chief.

4) At the time when the grant was confirmed the suit property was and is not in existence

5) There is pending before this court Civil Suit No. 168 of 2008 in which the applicant is seeking nullification of subdivision in respect of AGUTHI/GITITU/7 into 690 and 691.

1. It is therefore clear to my mind that the grant was confirmed in respect of a property which was not in existence as at the time when the same was granted and further it is clear that the applicant will suffer no prejudice by the existence of the said grant.
2. I therefore find no merit on the application for revocation of grant issued herein but in the interest of justice stay this cause pending the determination of High Court Civil Case No. 168 of 2008 wherein all the issues in dispute herein can be best ventilated with no order as to cost.

Dated, signed and delivered at Nyeri this 13th day of June 2014.

J. WAKIAGA

JUDGE

13/6/2014

Coram: Before Justice J. Wakiaga

Court clerk - Ndungu

Miss Muthoni for the applicant

Kiguoya Kamunge - petitioner.

Court: Ruling is read in open court in the presence of the above named.

J. WAKIAGA

JUDGE

13/6/2014