

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 1023 OF 1996

IN THE MATTER OF THE ESTATE OF SAMUEL MBOGO - (DECEASED)

RULING

1. The application dated 4th December 2012 seeks three (3) principal orders – that inhibitions be registered against certain titles pending hearing and determination of the application, that the Thika District Land Registrar be directed to cancel the said titles and that the said registrar be directed to reverse the transactions creating the said titles and that the old title Loc. 16/Mbugiti/1008 be registered the name of the deceased.

2. The background to the application is given in the affidavit sworn by the applicant, Simon Ndichu Njoroge, in support of the application. This cause had commenced on 13th May 1996 vide a Summons for Revocation of Grant dated 10th May 1996, which sought to revoke a grant made in Murang'a **SRMCSC No.72 of 1994** to respondent. This court on 27th June 2006 revoked the certificate of confirmation of grant made in Murang'a **SRMCSC No. 72 of 1994** on 13th June 1995. It was further ordered that a fresh grant be issued in the name of Rahab Wanjiru Mbogo, the respondent herein, and Simon Ndichu Njoroge, the applicant herein. By then the respondent had actually used the certificate of confirmation of grant dated 13th June 1995 to subdivide Loc.16/Mbugiti/1008 into six (6) new parcels, being Loc. 16/Mbugiti/1174, 1175, 1176, 1177, 1178 and 1179. After the orders of 27th June 2006 she proceeded to implement the certificate of confirmation of grant dated 13th June 1995 by transferring the said parcels of land to herself and her sons, Josphat Muigai Mbogo, Johnson Maina Mbogo, Ibrahim Boboti Mbogo, Samson Maina Mbogo and John Njoroge Mbogo.

3. The respondent has replied to the application. She swore an affidavit on 3rd June 2013. She concedes that she had been issued with a grant of letters of administration intestate in respect of the estate of her deceased husband. The said grant was confirmed on 13th June 1995. She says that on the basis of the confirmed grant she, on 29th May 1996, had the estate, comprised of Loc.16/Mbugiti/1008, subdivided and the resultant portions registered in the names of her children in accordance with the certificate of confirmation of grant issued in the matter. She further concedes that the confirmed grant was revoked by this court on 27th June 2006 and it was ordered that a fresh grant be issued to her and the applicant. She argued that by the time the grant of 1995 was revoked she had already distributed the estate of the deceased.

4. The parties appeared before me on 10th March 2014 and argued the application dated 5th December 2012.

5. The order recorded by Rawal J. on 27th June 2006 was by consent and it stated as follows:-

“After discussion with both the counsel, it is agreed by consent:-

(1) That the certificate of confirmation of grant dated 13th June 1995 issued in succession cause number 72/1994 before Senior Resident Magistrate at Murang'a be revoked all subsequent action be nullified.

(2) Fresh grant be issued herein in the names of Rahab Wanjiru Mbogo and Simon Ndichu Njoroge.

(3) The issue of the deceased holding

Loc.16/Mbugiti/1008 in trust for the objector and his siblings be determined prior to the confirmation of the fresh grant...

6. For the purposes of the application dated 5th December 2012, only items (1) and (2) of the said order of 27th June 2006 are relevant. The effect of that order was to revoke the grant made in Murang'a **SRMCSC No. 72 of 1994**, to cancel the certificate of confirmation of grant issued in that cause on 13th June 1995 and to nullify all the transactions carried out on the strength of the said certificate. The order of 27th June 2006 therefore affected the subdivision of Loc.16/Mbugiti/1008 and the subsequent registration of the resultant subdivisions in the name of the sons of the deceased. The said subdivision and registrations were nullified, with the result that *status quo* was restored to that prevailing as at 15th November 1994 when representation was granted in the said cause.

7. I find merit in the application dated 5th December 2012, and I hereby allow it with no orders as to costs.

DATED, SIGNED and DELIVERED at NAIROBI this 24th DAY OF October 2014.

W. MUSYOKA

JUDGE

In the presence of Ms. Kibara for Ms. Ndegwa advocate for the applicant.