



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (MILIMANI LAW COURTS)
CIVIL CASE 1927 OF 1996

IN THE MATTER OF THE ESTATE OF THE JORAM KIRIGI (DECEASED)

PAUL MAINA KIRUNGUI 1ST APPLICANT

GRACE WANGUI KIRUNGUI 2ND APPLICANT

VERSUS

MERCY MUTHONI KIRIGI 1ST APPLICANT

ANTONY MBURI KIRIGI 2ND APPLICANT

RULING

JORAM KIRIGI GACHUNA (the deceased) died intestate on 7.12.1995. He was survived by a widow, **Mercy Muthoni Kirigi** and six sons and one daughter. He left an estate that included parcels of land.

On 13.11.1996, a Grant of Letters of Administration intestate was made to his widow, **Mercy Muthoni Kirigi** and **Antony Mbui Kirigi**, one of the seven sons. On 1.10.2009, an application by way of a summons for revocation of the grant was made by **Paul Maina Kirungui** and **Grace Wangui Kirungui** who claimed that land number **Loc 19/Kiawambogo/1862** which is part of the Estate of the deceased belonged to their deceased step mother, one Rebecca Nduta Kirungui who was childless and who, according to the applicants, was hoodwinked by the deceased to transfer it into his name. They claim that the transfer of the said land to the deceased's name was fraudulent as the latter was not a beneficiary of the Estate of Rebecca Nduta Kirungui.

A copy of a Green Card in respect of land Title No.Loc 19/Kiawambogo/1862 annexed to the Applicants' affidavit sworn on 1.10.2000 in support of the application shows that the said parcel of land is a portion subdivided from the original land title No.Loc.19/Kiawambogo/1793 which on 27.7.1988 was registered in the name of Rebecca Nduta Kirungui who on 28.3.1989 transferred it to the deceased, Joram Kiriti Gacuna.

The Applicants claim, therefore, to be entitled to the Estate of the deceased because they consider the said parcel of land No.Loc.19/Kiawambogo/1862 to belong to them.

Wilfred Kihara Gachuna, a brother to the deceased, swore the replying Affidavit on authority of Mercy Muthoni Kirigi, the deceased's widow. It was not necessary. He is not party to these proceedings. The widow could have sworn it and could have deposed that the source of her information was Wilfred Kihara Gachuna if her fear was that she did not have sufficient knowledge about the facts relating to the land in question. But no matter. The upshot of the deponent's affidavit is that the deceased was rightly registered as the proprietor thereof many years ago.

Mr. V. W. Bwononga, the learned counsel for the Applicants, and **Mr. Stanley Henry**, the learned counsel for the Respondents, filed written submissions following a recorded consent to the effect that decision on the application be made on the basis of affidavit evidence and written submissions.

I have duly perused the application by summons dated 1.10.2009 and the Affidavit in support thereof as well as the Replying Affidavit. I have also perused the submissions filed by both counsel.

The Applicants are not related to the deceased. They are not heirs to the estate of the deceased. The only reason they have butted into the succession proceedings seeking to have the grant of letters of administration revoked is because they believe they are the ones who are entitled to be registered as the owners of the land parcel known as Loc.19/Kiawambogo/1862 which is part of the estate of the deceased.

The law relating to revocation of grants is contained in the Law of Succession Act Cap 160 and the Rules made thereunder. Subsections (a), (b), (c) and (d) (i),(ii), (iii) and (e) of Section 76 of the Act state:

S.76 A grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by any interested party or of its own motion-

(a) that the proceedings to obtain the grant were defective in substance;

(b) that the grant was obtained fraudulently by the making of a false statement or by the concealment from the court of something material to the case;

(c) that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently.

(d) that the person to whom the grant was made has failed, after due notice and without reasonable cause either-

(i) to apply for confirmation of the grant within one year from the date thereof, or such longer period as the court has ordered or allowed; or

(ii) to proceed diligently with the administration of the estate;

Or

(iii) to produce to the court, within the time prescribed, any such inventory or account of administration as is required by the provisions of paragraphs (e) and (g) of section 83 or has produced any such inventory or account which is false in any material particular; or

(e)that the grant has become useless and inoperative through subsequent circumstances

It is imperative for an Applicant seeking to have a grant revoked under Section 76 (supra) to establish to the satisfaction of the court any of the parameters set out in S.76 (supra).

The facts emerging from the Affidavits filed show that the claim by the Applicants may be justiciable but it would have to be established in a suit on the balance of probabilities and until a judgment in favour of the Applicants is obtained in such suit, the claim is inchoate. Such claim cannot be sustained in the instant succession proceedings. It is not possible for the claim of that nature to be proved in succession proceedings such as these. That claim belongs to the realm of ordinary suits. Unless an Applicant is able to demonstrate that he/she has a *locus standi* in the estate by showing that he/she is either an heir or a dependant or a claimant whose claim is binding on the estate, the provisions of Section 76 (supra) cannot legitimately be invoked. It could never have been the intention of the legislature that any person can plunge into succession proceedings regardless of whether they have a *locus standi* or interest known in law in the estate. The preamble to the Law of Succession Act, Cap 160, clearly shows that the Act was designed by Parliament “*to amend, define, consolidate, the law relating to intestate and testamentary succession and the administration of estates of deceased persons; and for purposes connected therewith and incidental thereto.*” The provisions of the Act constitute the Law of Kenya in respect of and have universal application to all cases of intestate or testamentary succession to the estates of deceased persons dying after 1st July 1981 when the Act came into force and to the administration of Estates of those persons whether they died before or after 1st July 1981.

The facts in support of the claim by the Applicants are refuted by the Respondents. The claim is controversial. The parties are not related. There is no proof that the land claimed by the Applicant was held in trust either for the Applicants or for their parents by the deceased. These are matters that are best left for proof in a properly instituted suit.

The Respondent’s counsel, **Stanley Henry**, has correctly pointed out that the grounds upon which revocation of the grant is sought have no bearing on the provisions of Section 76 of the Law of Succession Act not least because the Applicants have not shown that they are related to the deceased or are entitled to a share of the estate of the deceased either as heirs or persons whose claims are binding on the estate. The Applicants are obliquely alleging trust on the part of the deceased. But there is no evidence to prove it or to show that it is binding on the estate. The provisions contained in Part V of the Succession Act show the persons who are entitled to succeed to the estate of a person dying intestate. The Applicants’ have not shown that they are in that category.

For these reasons, I am constrained to dismiss the summons dated 1.10.2009 on the ground that it has no merit. I award the costs thereof to the Respondents.

Dated at Milimani Law Courts, Nairobi, this 21st day of June 2012.

G.B.M. KARIUKI, SC
JUDGE

COUNSEL APPEARING

Mr. W. Owaga for Mr. V. W. Bwonwonga & Co. Advocates for the Applicant

Mr. H. Gachuna Advocate, of Stanley Henry & Co. Advocates 1st Respondent