



REPUBLIC OF KENYA

High Court at Nakuru

Succession Cause 87 of 2005

IN THE MATTER OF THE ESTATE OF WAITHIRA MAINA (DECEASED)

RULING

The Interested Parties herein ANTHONY MAINA KIMANI, MARGARET WANGECHI WAINAINA, FLORENCE WAMBUI IKUMU and JOSEPH WAMBUGU WAITHAKA (*the Applicants*) by an Amended Chamber Summons for Revocation of Grant on 19th May 2012 and filed on 22nd May 2012 sought two (2) orders -

- (1) that pending the hearing and determination of this application inter partes the administrators be restrained by an order of injunction from transferring the 2.5 acres as reflected in the Grant to James Wanjiri, pending also the revocation of the Grant,
- (2) that the Grant issued to HANNAH WANJIRU, JOHN MWANGI KAHONO and HENRY NJUGUNA KAHONO on 6th October 2010 be revoked.

The Application was based upon the grounds on the face thereof, and the Supporting Affidavit of each of the Applicants, sworn on 16th May 2012, and 15th May 2012 (*in respect of Sammy Kamau Chegeh*).

The Applicants claim that each of them is a purchaser of part of the land known as BAHATI/KABATINI BLOCK 1/2503. They say that unknown to them, the Administrators of the estate of the late Waithera Maina (*deceased Hannah Wanjiru, John Mwangi Kahono and Henry Njuguna Kahono*) obtained a Confirmed Grant dated 6th June 2010, in which they the Applicants had been excluded from being confirmed as purchasers of the estate land. The Applicants as Interested Parties say that the Grant to the Administrators should be revoked on the grounds that the grant was procured fraudulently in terms of Section 76 of the Law of Succession Act, (*Cap. 160, Laws of Kenya*).

Section 76 aforesaid affords revocation or nullification of a Grant on any of the following grounds -

- (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 for the case,
- (c) that the grant was obtained by means of an untrue allegation of 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;

(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

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

The Applicant's case is that the Administrators obtained the Grant of Representation made on 23rd June 2010 and confirmed by the Certification of Confirmation made on 6th December 2010 fraudulently and by concealment from the court of something material from the court.

According to the Further Affidavits of all the five Applicants (*Anthony Maina Kimani sworn on 11th June 2012*) (2) Margaret Wangechi Wainaina sworn on 11th June 2012 (3) Florence Wambui Ikumi sworn on 11th June 2012 (4) Joseph Wambugu Waithaka sworn on 11th June 2012, and (5) Sammy Kamau Chegeh sworn on 11th June 2012 the Administrator on taking out this Succession Cause never disclosed, and therefore concealed a material fact to the court, that there was a previous Succession Cause No. 489 of 1998 at Nakuru on which a Grant of Letters of Administration Intestate had been issued to Nganga Mwangi and James Wanjiru on 26th May 1999 under the hand of the Hon. Justice D. M. Rimita.

It is the same Nganga Mwangi (*also known as Suleiman Nganga*) and James Wanjiru Mwangi) who along with their brother, Henry Njuguna Kahono and Sister Hanna Wanjiru) who made fresh petition in this cause without disclosing the existence of the previous 489 of 1998. The Grant issued in that cause has not been annulled or revoked. It had not been shown to have failed or been overtaken by circumstances.

In the previous Succession Cause 489 of 1998, the surviving children of the deceased Waithira Maina Mwangi alias Waithira Maina were shown as -

1. Nganga Mwangi
2. James Wanjeri
3. John Mwangi Kahono
4. Henry Njuguna (*now Elizabeth Wanjiku*)-

The Assistant Chief's letter dated 12th October 1998, shows the other children had chosen Nganga Mwangi and James Mwangi to apply for Letters of Administration on behalf of the family. In the current case the District Officer (Bahati Division) letter dated 11th January 2005 shows the deceased's children as -

1. Solomon Nganga
2. John Mwangi
3. James Wanjeri (Wanjeri) and
4. Henry Njuguna

There is no mention of Elizabeth Wanjiku! Is Solomon Nganga the same as Nganga Mwangi? Is James Wanjeri the same as James Wanjeri? Is John Mwangi the same as John Mwangi Kahono? Why

the changes in the names and omission of Elizabeth Wanjiku in the D.O.'s letter of 11th January, 2005?

In my view these are all legitimate questions to be addressed by the parties, and the court. At this point they raise serious doubts as to the bona fides, of this second Cause in respect of the same estate without first establishing why the first Cause was “*abandoned*”. Prima facie, the intention was to abuse the process of court. This court will neither allow nor condone abuse of its process.

In their Replying Affidavits Henry Njuguna Waithera, John Mwangi Kahono, Teresia Wanjiku Kahono, Hannah Wanjiru and Jane Wanjiru Mwangi all sworn on 29th May 2012 and filed on 30th May 2012 none of the Administrators explain any of the above issues. They all refer to the usual *bogey* and *red herring*, if there were any agreements for sale, no land control board consents were obtained. Their counsel argued along the same lines. The arguments do not answer the question of concealment from the court of the previous Cause in respect of the same estate.

In matters of Succession if Grant has failed and become inoperative, the proper procedure is to come to court, and seek appropriate orders for revocation, and appointment of new Administrators. The legal representatives do not file a new Cause without first having the first Cause determined. If they do, they risk the latter Grant being revoked as in this case.

In the circumstances and for the reasons given, the Applicant's Amended Chamber Summons for the Revocation of Grant, dated 19th May 2012 and filed in court on 22nd May, 2012 is allowed in terms of paragraph (b) & (c) thereof. The Applicant's will also have the costs of this application.

There shall be orders accordingly.

Dated, signed and delivered at Nakuru this 26th day of October, 2012

M. J. ANYARA EMUKULE

JUDGE