



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

SUCCESSION CAUSE NO. 134 OF 1999

IN THE MATTER OF THE ESTATE OF RUGU GACHIE (DECEASED

JULIUS NYAGA

RUGU.....APPLICANT

**VERSUS
JAMES MENJU**

RUGU.....RESPONDENT

AND

JOSEPH KARIUKI NDEGWA

**CHURCH COMMISSIONERS FOR KENYA.....INTERESTED
PARTIES**

JUDGMENT

A Grant of Letters of Administration intestate in respect of the Estate of Rugu Gachie, deceased, was issued in the joint names of **Julius Nyaga Rugu** and **Jackson Gachie Rugu** on 9th October 1991 and confirmed on 18th May 1992. **Julius Nyaga Rugu**, hereinafter referred to as the Applicant is now before this court seeking to have the grant revoked vide the Summons for Confirmation of Grant dated 19th August 1999. The Applicant's contention is that James Menju Rugu surreptitiously applied for the grant to be confirmed without his knowledge or consent yet he was not appointed an administrator. It is said that on 16th June 1992, Jackson Gachie Rugu, now deceased, not knowing that the Respondent herein had caused the grant to be confirmed on 18th May 1992, made an application for the grant issued on 9th October 1991 to be confirmed. Again, it is alleged that the second application was filed without the knowledge and consent of the Applicant herein. The Applicant alluded that during Land Consolidation, he caused his fragments measuring 1.5 acres to be consolidated with those of his father to comprise **L.R. NO. OTHAYA/ITEMEINI/926** measuring approximately 6.6 acres. He claimed he was entitled to claim 1.5 acres and the rest to be shared as the Estate of their father. The Applicant further alleged that his late brother Jackson Gachie Rugu was entitled to 0.3 acres whereas he was entitled to get 2 acres from their late father's Estate. The Applicant further alleged that the Respondent and his late brother had awarded themselves bigger portions than they were entitled. For the above reasons, the Applicant was of the view that the grant was confirmed fraudulently and by the making of a false statement of fact. He has now urged this court to revoke the grant. It is the Applicant's submission that had his claim been taken into account, he would have been entitled to a bigger share of the land than that given to his late brother Jackson Gachie Rugu. The Applicant prayed for the grant to be revoked so that parcels No. **L.R. NO. OTHAYA/ITEMEINI/926** and **OTHAYA/ITEMEINI/927** can revert back to the name of the deceased.

Joseph Kariuki Ndegwa and Church Commissioners For Kenya being interested parties opposed the summons. They claimed that the late Jackson Gachie Rugu sold to them a parcel of land measuring 1.5 acres after showing them the certificate of the confirmed grant. They averred that they attended the Land Control Board where consent was obtained. The Interested Parties were also shown the mutation forms showing how the land was subdivided. They alleged that the Applicant filed the application too late in the day and failed to prosecute for an inordinately long period of time hence he should not be allowed to enjoy the discretion of the court yet he is guilty of laches. The Interested parties urged this court to find the Summons for Revocation of Grant to be an abuse of the court process because the Applicant herein sold his entitlement of the Estate to one Godfrey Wanyoro Rugu i.e. **L.R. NO.**

OTHAYA/ITEMEINI/1601 the resultant subdivision of **L.R. NO. OTHAYA/ITEMEINI/926**. It is said the aforesaid parcel was sold in a public auction pursuant to a judgment pronounced vide **Nyeri S.P.M.C.C.C. No. 482 of 1999**. **Godfrey Wanyoro Maigwa** sold it to one Ndegwa Mugweru (now deceased). Joseph Kariuki Ndegwa has now taken up letters of administration to succeed the late Ndegwa Mugweru and inherit **L.R. NO. OTHAYA/ITEMEINI/1601**. The Interested parties stated that they have put up a church called A.C.K. Church.

The Respondent on his part opposed the Summons claiming that the Applicant, his late brother, Jackson Gachie Rugu and their mother met and agreed that the trio share the parcel of land known as **L.R. NO. OTHAYA/ITEMEINI/926** in equal measures. The respondent confirmed that the late Jackson Rugu sold his portion to Kairia A.C.K. Church thus they were included in the application for Confirmation of Grant as beneficiaries.

After a careful consideration of the material placed before this court and the rival submissions, I have come to the conclusion that the Summons for Revocation of Grant must be dismissed for the following reasons: First, it is very clear that the Applicant filed the application too late in the day. Secondly, there was also an inordinate delay in prosecuting the application itself on the part of the Applicant. Thirdly, there is clear evidence that the Applicant after the confirmation of grant sold his entitlement to one Godfrey Wanyoro Maigwa but was later sued when he purported to rescind the sale agreement. Eventually, his entitlement i.e. **L.R. NO. OTHAYA/ITEMEINI/1601** was sold by public auction to Godfrey Wanyoro Maigwa who in turn sold the land to Ndegwa Mugweru. Fourthly, even if the Applicant's application had merit, it is obvious that it will not affect the rights of the Interested Parties who are innocent purchasers for value. The proprietary rights acquired by the Interested Parties are protected by *Section 93* of the law of Succession Act. Fifthly, I believe the averments of James Menju Rugu that the family met and agreed on the mode of distribution. It would seem that though the Applicant may not have been involved in the confirmation of grant, he had knowledge of what was taking place.

In the final analysis, a fair order is to dismiss the Summons for Revocation of Grant dated 19th August 1999 – which I hereby order, with costs to the respondent and Interested Parties.

Dated and delivered at Nyeri this 15th day of July 2011.

J. K. SERGON

JUDGE

In open court in the presence of Mr. Ndirangu for Joseph Kariuki Ndegwa, Maatawa for Church commissioners of Kenya, James Menju in person. No appearance Gichuhi Mwangi for Applicant.