



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

SUCCESSION CAUSE NO.1579 OF 2008

IN THE MATTER OF THE ESTATE OF THE LATE KARARA NGINYA

GEORGE THIONGO

KARARA.....APPLICANT

VERSUS

ANTONY MUNYUA

KARARA.....RESPONDENT

R U L I N G

On 27th June, 1996, the Kiambu Senior Principal Magistrate issued letters of administration intestate in respect of the estate of Karara Nginya (deceased) to Antony Munyua Karara (the respondent). The said letters of administration intestate were duly confirmed on 1st November, 1996. The Succession Cause is No.98 of 1987. In the Petition seeking the grant of the said letters of administration, the respondent claimed that he was the son of the deceased. The respondent listed the properties owned by the estate of the deceased as two parcels of land, namely L.R No.Kiambu/Lari/76 measuring an 5.3 Hectares (or 132.13 acres) and LR No.Githunguri/Kiaria/T.377 measuring of an 0.19 acres. The respondent made a proposal, which proposal was approved by the Subordinate Court, in regard to how the said properties that comprised the estate of the deceased were to be distributed to the beneficiaries.

On 9th July, 2008, George Thiong'o Kiara (the applicant) filed an application pursuant to the provisions of **Section 70** of the **Law of Succession Act** seeking to have the said letters of administration issued to the respondent by the Kiambu Subordinate Court revoked. The applicant claimed that the respondent had obtained the said letters of administration by deliberately misleading the court in regard to the identity of the beneficiaries of the estate of the deceased. In particular, it was the applicant's case that the respondent was not a child of the deceased; he was therefore not entitled to petition the court to administer the

deceased's estate or inherit any property that comprised the said estate. It was the applicant's contention that the respondent, pursuant to false information that he had given when he petitioned the Court to be issued with a grant of letters of administration intestate, had been convicted of two criminal offences of **false swearing** contrary to **Section 114** as read with **Section 36** of the **Penal code** and **obtaining Land registration by false** pretences contrary to **Section 320** of the **Penal Code**. The applicant in the circumstances urged the Court to revoke the grant of letters of administration that was issued to the respondent as the same was obtained on the basis of false and misleading information. The application was supported by the annexed affidavit of the applicant, George Thiongo Karara, who claimed to be one of the sons of the deceased. The application was supported by further affidavits sworn by John Kariuki Karara, another son of the deceased, Francis Munyua Nginya and John Peter Nginya Karara.

The application is opposed. The respondent swore a lengthy affidavit in opposition to the application. He denied the allegations made by the applicant that he had obtained the said grant of letters of administration intestate in respect of the estate of the deceased by the making false statements or declarations. He avers that the issues that the applicant is raising in the present application, were the same issues that were raised in the Subordinate Court and considered by the same Court before they were dismissed. He contends that the said issues sought to be canvassed herein are therefore *res judicata*. He further argued that the applicant was colluding with others in order to deprive him of the right to administer and inherit the estate of his late father. He dismissed his conviction in the criminal case as having been contrived to enable the applicant have a basis to establish a case against him in this succession cause. He urged the court to dismiss the application for revocation of grant with costs.

Prior to the hearing of the application, counsel for the applicant and counsel for the respondent agreed by consent to file written submissions setting out their respective client's cases. The said written submissions were duly filed. At the hearing of the application, the said counsel agreed that this ruling be delivered on the basis of the said written submissions. This court has carefully considered the said written submissions. It has also read the pleading filed by the parties herein, including the affidavits in support of their respective opposing positions. The issue for determination by this court is whether the applicant established a suitable case for this court to revoke the grant that was issued to the respondent. According to the applicant, the respondent obtained the said grant of letters of administration intestate in respect of the estate of the deceased by making false statements regarding the properties that belonged to the estate of the deceased. **Section 76(b) and (c)** of the **Laws of Succession Act** grants this Court jurisdiction to set aside, revoke or annul any grant of letters of administration which was obtained pursuant to the fraudulent making of false statements or by concealment from the Court of something material to the case. This Court has further jurisdiction to revoke a grant if it forms the view that the grant was obtained by means of untrue allegation of fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently.

In the present application, having evaluated the facts of this case, it was clear that the applicant included an asset as part of the estate of the deceased that did not belong to the estate of the deceased. There were two persons known as Karara Nginya. The two were half brothers. They were sons of Nginya Karara who had been married to four wives. According to the Kikuyu naming tradition, the two sons of two of the wives were named Karara Nginya. The first Karara Nginya is the father of the applicant. He was the owner of the parcel of land known as Githunguri/Kiaria/T.377. The second Karara Nginya is the father of the respondent. He was the registered owner of a parcel of land known as LR No.Kiambu/Lari/71. Both Karara Nginya are deceased. The first Karara Nginya died in 1953 while the second Karara Nginya Karara died in 1977. In petitioning the Kiambu Subordinate Court to be granted letters of administration intestate, the respondent was rightly applying to administer the estate of his father, the second Karara Nginya who died in 1977.

However, the respondent included the property of the estate of Karara Nginya who died in 1953. That property is LR No. Githunguri/Kiaria/T 377 measuring 0.19 acres of an acre. The respondent should not have included the said property in the list of properties belonging to the estate of the second Karara Nginya. For this infraction, the respondent was criminally charged and convicted for giving false information. He was tried and convicted by the Kiambu Subordinate Court in **Criminal Case No.2280 of 1997, Republic vs Antony Munyua Karara**. The respondent did not appeal against this decision. Under

Section 47A of the **Evidence Act**, a final judgment of a competent court in any criminal process which declares any person to be guilty of a criminal offence, shall be taken as conclusive evidence that the person so convicted was guilty of that offence as charged. The respondent cannot run away from the fact and reality that he was tried and convicted of the offence of giving false information in regard to the proprietorship of the parcel of land that is owned by the estate of the first Karara Nginya.

In the premises therefore, this court finds that the applicant established his case to the required standard of proof on a balance of probabilities. The respondent included a property i.e. LR No.Githunguri/Kiaria/T.377 that was not part of the properties owned by the estate of the second Karara Nginya who died in 1977. That property belonged to the estate of the first Karara Nginya who died in 1953. To that extent the certificate of confirmation of grant which includes the property known as LR No.Githunguri/Kiaria/T.377 belonging to the estate of the first Karara Nginya is hereby revoked. That property shall be excluded as a property of the estate of the second Karara Nginya. If any registration may have been effected pursuant to the said impeached certificate of confirmation of grant, it shall be cancelled. The title shall revert to the name of the first Karara Nginya (deceased). The applicant shall be at liberty to proceed with the succession of the estate of his late father, Karara Nginya, the first. The applicant shall have the costs of this application.

DATED AT NAIROBI THIS 1ST DAY OF SEPTEMBER, 2011

L. KIMARU
JUDGE