



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAKURU**

**Miscellaneous Succession Cause 284 of 2008**

**IN THE MATTER OF THE ESTATE OF JACKSON MUGO MATHAI (DECEASED)**

**MUIGAI COMMERCIAL AGENCIES LTD.....INTERESTED PARTY/APPLICANT**

**VERSUS**

**MARY WANJIKU MUGO.....LEGAL REPRESENTATIVE/RESPONDENT**

**RULING**

Jackson Mugo Mathai (the deceased) died on

24<sup>th</sup> August 2008 and a grant of letters of administration was issued to his widow Mary Wanjiku Mugo (the respondent) on 26<sup>th</sup> January 2009.

Muigai Commercial Agencies Ltd, describing itself as an Interested Party, which I will hereinafter refer to as “the Applicants” seeks by its summons for revocation or annulment of grant dated 17<sup>th</sup> July 2009 and brought under **Section 47** and **76** of the **Law of Succession Act, Cap 160** of the **Laws of Kenya** (the Act) as well as **Rule 44** of the **Probate and Administration Rules** to be joined in this case as an Interested Party and the revocation of that grant.

The application is based on the grounds that the proceedings to obtain the grant were defective in substance; that the grant was obtained fraudulently and by concealment from court of material facts; that the respondent is intermeddling with the estate of the deceased; that the respondent has not demonstrated any diligence in administering the estate of the deceased; that the respondent has to date not filed any accounts of the administration of the estate as required by law and that the grant has now become useless and inoperative.

The application is supported by three affidavits of Margaret Njeri Muigai, a director of the Applicant the thrust of which is that by two written agreements dated 15<sup>th</sup> September 1999 and 7<sup>th</sup> August 2000, the deceased authorized the Applicant to sell as his agent, the parcel of land situate in Kanpi Ya Moto and known as **Title No. Kampi Ya Moto Block 3/23** (the suit land) comprising of 585 acres or thereabouts for Kshs.58.5 million. Pursuant to those agreements the Applicant caused the suit land to be subdivided into 204 portions known as **Title Nos. Kampi Ya Moto Block 3/24-228**, sold them to various people and remitted the entire purchase price to the deceased. Despite her knowledge of those agreements, the sales and remittance of the purchase price to the deceased, the respondent applied for a grant of the letters of administration of the deceased’s estate but clandestinely and fraudulently concealed from court the Applicant’s agency and included on the list of the deceased’s assets portions of the suit land known as **Title Nos. Kampi Ya Moto Block 3/24-31** which the Applicant had already sold to third parties and remitted the purchase price thereof to the deceased. The respondent has now illegally sold two of those subdivisions before the grant of letters of administration has been confirmed. She concluded that the respondent’s illegal acts are not only

unfair but have also exposed the Applicant to numerous suits by the purchasers.

In response, the respondent in her replying and further affidavits started by challenging the competence of this application on three grounds. One, that as the Applicant has no proprietary interest in the deceased's estate but a busybody which has no locus standi to bring this application. Its only stake in the transactions is its commission based on sales of the subdivisions sold. On the genuine sales, with agreements duly executed by the deceased, it has been paid its commission in full. Secondly, the Applicant's claim, if any, based on the agency agreements entered into with the deceased in 1999 and 2000 is statute barred under the **Limitation of Actions Act**. And thirdly, that the matter has been the subject of Nakuru HCCC No.179 of 2000 and HCCC No. 80 of 2006 and is therefore res judicata.

On the merits of the application, while conceding the Applicant's agency, the respondent deposed that any sales of the subdivisions were in law to be effected through written agreements between the purchasers and the deceased. After three to four years, the deceased discovered that the Applicant was receiving more money on the sales than it was disclosing to him and revoked the agency agreements. She dismissed the Applicant's contention that in the absence of any written document the Applicant's agency is still subsisting.

In her further affidavit the respondent conceded that she sold some of the subdivisions before the grant of letters of administration was confirmed but following advice from her lawyer that that was an illegal act, she has put those sales on hold. Finally she wondered what would happen to the deceased's estate if the grant to her is revoked as the Applicant has not suggested who should be appointed to administer it.

In response to these averments Mrs Margaret Njeri Muigai deposed in her further affidavits that the agency involved large sums of money and the Applicant cannot therefore be wished away as a busybody. She concluded that this application has not been brought on behalf of the purchasers as claimed "but due to the acts of the administratrix (respondent) directly affecting the applicant."

In their submissions, counsel for the parties expounded on their respective clients' averments as summarized herein above. Mr. Mwangi for the Applicant cited the Court of Appeal decision in **Matheka & Another Vs Matheka [2005] 1 EA 251** and submitted that an interested party can apply for revocation of a grant of letters of administration. In this case the respondent's act of selling the pieces of land the Applicant had sold even before the grant to her is confirmed founs **Section 55** of the Act and is therefore illegal thus entitling the Applicant to make this application. He continued to argue that the Applicant not only caused the survey and subdivisions of the suit land but is also bound to facilitate the transfer of the subdivisions and issue of title deeds to the purchasers. It is not therefore true that its only stake in the matter is commission. The two High Court suits against the deceased having been withdrawn, he submitted that the matter is not res judicata as claimed by the respondent.

On what will happen to the estate if this application is granted, he submitted that **Section 76** of the Act read together with **Rule 44(1)** of the Rules gives the court the discretion to appoint another suitable person like the Applicant to administer the estate. He said **Section 57** of the Act authorizes the court to appoint corporations to administer estates of deceased persons.

For the respondent Ms Magana submitted that although the respondent has been unable to trace the deceased's letter of revocation the deceased indeed revoked the applicant's agency. The deceased's conduct and the Applicant's two suits (Nakuru HCCC No.179 of 2000 and No. 80 of 2006) claiming damages for breach of the agency agreement is clear testimony that the agency was indeed revoked.

Regarding the Applicant's standing she submitted that the sales of the subdivisions to purchasers who entered into agreements with the deceased are complete and those subdivisions are not included on the list of the deceased's assets in this cause. The Applicant having failed to provide proof of the sales of the other subdivisions, its claim that it sold all the subdivisions is baseless. If there are any aggrieved purchasers she invited them to sue the respondent. She said the Applicant having withdrawn the two suits and paid huge costs, it is a busybody which has no interest in the deceased's estate. Even if its commission had not been paid, its remedy lies in a suit against the respondent as the legal representative of the deceased which suit is now statute barred under the **Limitation of Actions Act**. She urged me to dismiss this application with costs.

I have considered these submissions and carefully read the affidavits both in support and in opposition to this application. Nakuru HCCC No.179 of 2000 and HCCC No. 80 of 2006 having been withdrawn and therefore not decided on merit, I find that this matter is not res judicata as Ms Magana for the respondent contended. See **Kibogy Vs Chemweno [1981] KLR 35& Wanguhu Vs Kania [1987] KLR 51,**

The main issue in this application is whether or not the applicant is an interested party within the meaning of **Section 76** of the **Law of Succession Act** and if so whether or not it has a locus standi to bring this application.

A revocation of a grant of representation may be sought, according to **Section 76** of the **Law of Succession Act** and **Rule 44** of the Probate and Administration Rules, by any person interested in the estate of the deceased person. **Section 76** of the **Law of Succession Act** and the Act as a whole does not define who is an “interested party” who can apply for revocation or annulment of the grant. It simply provides that “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.”

There is no agreement in the High Court on who is an interested party thus competent to bring the application. Koome J held in In the matter of the Estate of Gichia Kabitū (deceased) Nairobi High Court succession cause No.2559 of 2002 that they are the persons who have priority in law to apply for grant of representation are those set out in **Section 66** of the **Law of Succession Act** and the order of preference is as set out in the provision. In the Matter of the Estate of Hemed Abdalla Kaniki (deceased) Nairobi High Court succession cause No. 1831 of 1996, Kamu J, on the other hand took the view that **Section 76** is open to any person who may be interested in the estate of the deceased person, and not just to the class of persons mentioned in **Section 66**. In his opinion **Section 76** and **Rule 44** are intended to determine greater fundamental legal issues with a view to ensuring the proper administration and finalization of the estate. Section 76(D) and (e) of the Law of Succession Act are concerned with the administration of the estate. Any person therefore interested in administration of the estate has sufficient standing to seek revocation of the grant under Section 76(D) and (e) of the Law of Succession Act. It is only the persons listed in Section 66 who, as it were have a stake in the estate who in my view can legitimately bring applications under Section 76(A) (B) and (c) of the Law of Succession Act challenging the propriety of the grant making process. Persons who are not qualified to apply for grant would have no basis for challenging the making of the grant.

In this case it is not in dispute that the applicant is not an heir and is not and has never a dependent of the deceased. It has no proprietary interest in the deceased’s estate. It is also not an advocate or attorney of the purchasers. If there are any aggrieved purchasers, they should sue the respondent as the legal representative of the deceased. I agree with Ms Magana that the deceased’s conduct and the Applicant’s two suits (Nakuru HCCC No.179 of 2000 and No. 80 of 2006) in which it claimed damages for breach of the agency agreement is clear testimony that the the deceased revoked the Applicant’s agency.

Taking all these factors into account, I agree with Ms Magana that the Applicant is a busybody which has no business poking its nose into the affairs of the administration of the deceased’s. Consequently I dismiss this application with costs.

**DATED and DELIVERED at Nakuru this 13<sup>th</sup> day of May, 2010.**

**D. K. MARAGA**  
**JUDGE.**