

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
SUCCESSION CAUSE NO.2010 OF 2008
IN THE MATTER OF THE ESTATE OF BETH NINGA GICHU *alias* NINGA MUURU
(DECEASED)

BONIFACE NJUGUNA KIMANI.....APPLICANT

VERSUS

JOSEPH MUIGAI.....RESPONDENT

R U L I N G

The applicant filed summons to revoke or annul the grant that was issued to the respondent in respect of the estate of the deceased. The applicant alleged that the said grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant to be annulled or revoked notwithstanding that the allegation was made in ignorance or inadvertently. The applicant further contended that the proceedings to confirm the grant were defective in substance. The application is supported by the annexed affidavits of Boniface Njuguna Kimani the applicant, J. P. Njoroge Kimani and Mugo Kirega. The application for revocation of grant is opposed. The respondent wrote a letter to court explaining the circumstances under which he became the administrator of the estate of the deceased. He also filed a replying affidavit in opposition to the application. At the hearing of the application, this court heard oral rival submissions made by the applicant and by the respondent. Both the applicant and the respondent were unrepresented.

This court has considered the said submissions. It has also read the pleadings that were filed by the parties herein before the Thika Chief Magistrate's Court. The issue for determination by this court is whether the applicant made a case for the annulment of grant that was issued and confirmed to the respondent. The facts of this case are more or less not in dispute. The deceased Beth Ninga Gichu also known as Ninga Muuru died on 18th December 1981. The deceased was survived by his son, Gregory Kimani Njoroge (Gregory). The deceased owned a parcel of land known as Loc.4/Kaguthi/710 (the suit land). The parcel of land measured approximately 2.6 acres. According to the respondent, Gregory borrowed from him a sum of Kshs.20,000/- in 2000. As a consideration for the said advance, the said Gregory agreed to lease to him part of the suit land. The respondent leased a portion of 0.7 of an acre for a period of five (5) years. According to the respondent, in 2005, Gregory agreed to sell to him the said portion of 0.7 of an acre for a consideration of Kshs.210,000/-. An agreement was executed before an advocate at Thika on 14th July 2005. At the time Gregory purports to have sold part of the suit land to the respondent, he had not obtained letters of administration to administer the estate of the deceased. It is therefore evident that Gregory did not have legal capacity to undertake any transaction regarding the suit land. According to the said agreement, the respondent paid a total sum of Kshs.150,000/- out of the agreed purchase consideration in two installments of Kshs.120,000/- and Kshs.30,000/- respectively. In his testimony before court, the respondent stated that he had paid a further sum of Kshs.20,000/- to the said Gregory. There is however no evidence that the respondent made such payment.

On 25th July 2005, Gregory petitioned the Chief Magistrate's Court at Thika to be appointed the administrator of the estate of the deceased. The succession cause that was filed is No.323 of 2005. In the said petition, Gregory identified himself as a son to the deceased. He listed the respondent as a beneficiary of the estate of the deceased. It is instructive that Gregory did not identify any of his children as beneficiaries of the deceased's estate. The court issued Gregory with a grant of Letters of Administration intestate on 3rd October 2005. On 26th June 2006, Gregory applied for the said grant of Letters of Administration to be confirmed. He identified the suit land as the only asset of the deceased. He proposed to distribute the suit land into two portions of 1.9 acres and 0.7 acres respectively. He proposed to inherit the 1.9 acres while the 0.7 acres would be inherited by Joseph Mungai (the respondent). However, before the grant could be confirmed, Gregory died on 28th July 2006. On 30th January 2007, the respondent made an application before the said court to be substituted as an administrator of the estate of the deceased in the place of Gregory. In the application, the respondent declared that "*I am the sole remaining beneficiary of the deceased herein (sic) estate*". He further declared that the "*Administrator's sons namely BONIFACE NJUGUNA KIMANI and PETER NJOROGE KIMANI have failed to file an application for substitution.*" In their application seeking to annul the grant

that was issued to the respondent, the applicant stated that he was not aware of the succession proceedings. He further argued that the respondent was not a beneficiary of the estate of the deceased. Having evaluated the conflicting facts in this regard, it was clear to the court that the respondent deposed to an untrue statement in order to persuade the court to substitute him in the place of Gregory as the administrator of the estate of the deceased. It was evident to the court that although facts point to the respondent being for all intent and purpose a creditor to Gregory, the respondent concealed these material facts from the court by falsely describing himself as a beneficiary to the deceased estate. A beneficiary to an estate of a deceased person is a person who fits the description of a dependant under **Section 29 of the Law of Succession Act**. Further, there was no evidence to suggest that the applicant and his brother had been given an opportunity by the court to take over the succession proceedings from their deceased father so that in the event they refused to take over proceedings, the respondent would be justified in seeking to take letters to administer the said estate of the deceased.

The respondent continued this deception when he applied for confirmation of grant of the Letters of Administration that were issued to him by the court. In the affidavit in support of application for confirmation of grant which was sworn on 13th July 2007, the respondent deposed that *“I am the sole surviving beneficiary after the demise of the former administrator and son GREGORY KIMANI NJOROGI on 28th July 2006”*. He further averred that *“the deceased was not survived by any other beneficiary”*. These statements were obvious falsehoods. It was on the basis of this false affidavit that a certificate of confirmation of grant was issued to the respondent on 28th June 2008. This was despite the fact that the applicant had on 30th May 2007 secured the court to write a letter to the Chief of Ithiru Location to confirm their bona fides. The respondent used the certificate of confirmation of grant to have the suit land subdivided into two portions. Two title deeds were issued in the name of the respondent. The title deed in respect of the 1.9 acres was registered in the name of the respondent *“In trust of the estate of Gregory Kimani Njoroge”*.

Has the applicant established a case for the annulment of grant that was issued to the respondent? It was clear from the above facts that the respondent obtained the said grant of Letters of Administration and thereafter obtained certificate of confirmation of grant by deliberately misrepresenting his status. The respondent concealed material facts from the court, especially regarding the fact that he was not a beneficiary to the estate of the deceased and further that there were other legitimate beneficiaries of the deceased who include the applicant. In the circumstances therefore, this court holds that the applicant established a suitable case for the annulment or revocation of grant that was issued to the respondent. The grant of Letters of Administration that was issued to the respondent on 2nd March 2007 is hereby revoked. Similarly, the certificate of confirmation of grant that was issued to the respondent on 23rd June 2008 is hereby annulled.

Grant of Letters of Administration in respect of the deceased's estate is hereby issued to Boniface Njuguna Kimani and J. Peter Njoroge. The entries that were made by the Land Registrar Murang'a pursuant to the said revoked certificate of confirmation of grant in respect of the suit land are hereby cancelled. The suit land shall remain registered in the name of the deceased pending the filing of an appropriate application before this court for confirmation of grant. The applicant shall refund to the respondent the sum of Kshs.150,000/- to the respondent within thirty (30) days of today's date or in default thereof, the respondent shall be at liberty to execute for the same. The applicant shall have the costs of these proceedings.

DATED AT NAIROBI THIS 5TH DAY OF NOVEMBER, 2010

L. KIMARU
JUDGE