REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

SUCCESSION CAUSE NO. 123 OF 2008

Lesiit J.

NAFTARI MUGA.....APPLICANT

VERSUS

GERRARD NJUE M'MUGA.....PETITIONER/RESPONDENT

RULING

The application under consideration is a summons for revocation or annulment of grant. The applicants are the first to the fourth applicants in this application are daughters to the deceased Naftari Muga while the 5th and the 6th are the grand daughters of the deceased. They are seeking two orders i.e.

1. That the confirmed Letters of Administration to the estate of NAFTARI MUGA alias NAFTARI M'MUGA BAITIRITHIA issued to the respondent/petitioner revoked or annulled.
2. That an order of inhibition be placed against Land Parcel Number MUTHAMBI/CHAMUGA/263 so as to prevent any further dealings or transfer of the same until determination of this application.
3. That the costs of this application be provided for.

The grounds upon which the orders are sought are as follows:

(a) That the Succession Cae herein was filed secretary and without the knowledge of the applicants and other beneficiaries to the estate of NAFTARI MUGA alias NAFTARI M'MUGA BAITIRITHIA.

(b) That the beneficiaries never signed Consent allowing the petitioner herein to file the Succession Cause neither did they give their consent to the confirmation of grant.

(c) That the grant was obtained fraudulently by making false statement or concealment from the court of material facts and by making untrue allegation of essential facts so as to justify the issuance of the grant.

(d) That the distribution of the estate of NAFTARI MUGA alias NAFTALLY M'MUGA BAITIRITHIA was done unfairly by the petitioner in that he has transferred to himself the whole of Land Parcel Number MUTHAMBI/CHAMUGA/263 in total disregard of the other beneficiaries.

The application is supported by an affidavit sworn by the 1st applicant Lucy Maitha Njiru on her behalf and on behalf of the other applicants.

The application is opposed by the respondent/petitioner. The respondent has filed a replying affidavit dated 15th October 2010. In that affidavit the Respondent avers that there was no misrepresentation at the time the petition was filed; that the 1st to the 4th applicants are his sisters who are married and living elsewhere with their husbands and that therefore they have no right to inherit from the deceased since they will be inheriting from their husbands; that the 5th and the 6th applicant are the grand daughters of the deceased and that therefore they are not dependants of the deceased.

Mrs. Ntarangwi argued this application on behalf of the six applicants while Mr. Gichunge represented the respondent. I have considered the submissions by both counsels.

This application has been brought under Section 76 (a) (b) and (c) of the Law of Succession Act and rules 44(1) and 73 of Probate and Administration Rules. In order for the applicants to succeed in this application they must show that the proceedings filed to obtain the grant sought to be revoked were defective in substance; or that the grant was obtained fraudulently by the making of a false statement; or by the concealment from the court of something material to the case; or that the grant was obtained by means of a non true allegation of a fact essential in point of law to justify the revocation of the grant not withstanding that the allegation was made in ignorance or inadvertently.

Mrs. Ntarangwi in her submissions stated that the letters of administration were obtained fraudulently and based on untrue statements of facts. Counsel urged that the applicants are beneficiaries of the deceased but that they were left out in the affidavit of dependants and neither were they asked to sign a consent allowing the Petitioner to bring the petition to court. Counsel submitted that in the affidavit in support of summons for confirmation of grant of administration the petitioner/respondent indicated that the deceased was survived by him and the respondents' who are his two daughters Janice Kagwiria and Eunice Kainyu. Counsel submitted that in the affidavit in support of the petition the respondent described Janice and Eunice as daughters of the deceased while in fact they were his daughters and grand daughters to the deceased. Counsel submitted further that the two daughters of the respondent were the ones who signed the consent for the confirmation of the grant. Counsel submitted that the 1st to the 4th applicants were daughters of the deceased and that even though they are married, one of them lives on the land which is part of the estate of the deceased.

Mr. Gichunge on his part relied on the replying affidavit sworn by the respondent. Counsel submitted that the application should not be granted since if the letters of administration were revoked the estate would be left hanging.

I have carefully considered all the documents filed in this succession cause by the petitioner. I find that the petitioner, the respondent to this application made a false statement when in the affidavit in support of the confirmation of grant he swore that the deceased was survived by only three dependants. That was a false statement of fact. The petitioner made a further false statement where he stated that Eunice Kainyu and Janice Kagwiria were the children of the deceased. I find further that the respondent concealed essential facts when he failed to disclose that the deceased was survived by his four daughters and the two granddaughters, other than his own daughters.

Having carefully considered this application I am satisfied that the applicants have proved that the confirmation of grant was obtained fraudulently by the making of false statement and by the concealment of material facts. The applicants are therefore deserving of their prayer for the revocation of the confirmed grant.

Mrs Ntaragwi in her submissions stated that since the confirmation of the grant the respondent had registered the land, the subject matter of the deceased estate in his name. Counsel submitted that for those reasons the applicants were seeking the order for inhibition over the land the subject matter of the petition. That submission is supported in paragraph 15, 16 and 17 of the supporting affidavit by Lucy Maitha Njiru.

The respondent in his replying affidavit has deposed that he was the only dependant of the deceased entitled to inherit the land, the subject matter of the estate for being the only son of the deceased and that therefore the orders sought ought not to be granted.

The applicants have satisfied the requirements of section 76 of the Law of Succession Act. It is only wise that an order to preserve the land is made by this court in order to preserve the subject matter of the succession cause.

I noted that the prayers in the summons for the revocation of grant are seeking the revocation of letters of administration. That is an error and when the respondents advocate pointed it out to the applicants advocate, she stated that the revocation sought was the confirmed grant. Having considered the submissions by both counsels and the affidavits for and against this application, I have no doubt in my

mind that the document sought to be revoked is the grant and not the letters of administration. I am invoking the overriding objective under section 1A(1) of the Civil Procedure Act in order to facilitate the just, expeditious, proportionate and affordable resolution of the dispute herein. To that end I will give effect to what is provided under section 76 of the law of Succession Act by granting an order for the revocation of the confirmed grant as opposed to the one sought.
Having come to the conclusion I have of this matter I will allow the application by the applicants in the following terms:

1. The confirmed grant to the estate of Naftari Muga issued to the respondent/petitioner be and is hereby revoked
2. An order of inhibition against land Parcel **NO. MUTHAMBI/CHAMUGA/263** be and is hereby issued pending the determination of this cause.
3. The cost of the application be in the cause.

Dated Signed and delivered at Meru this 5th November 2010

LESIIT, J
JUDGE

In the presence of the parties
Kirimi – Court Clerk.
Mrs Ntaragwi for the Applicants
Mr. Gichunge for Respondent/Petitioner

LESIIT, J
JUDGE