

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NYERI
Misc Appli 26 of 1999

STEPHEN MWANGIAPPLICANT

VERSUS

JOYCE WANJIRU WATHUA

ELIUD MITHAMO GITHAIGA.....RESPONDENT

R U L I N G

About 8 years ago, Stephen Mwangi, hereinafter referred to as the applicant filed the instant application seeking that the grant of Letters of Administration to Joyce Wanjiru Wathua made on the 2nd day of July, 1993 be revoked or annulled on the grounds that the proceedings to obtain the same were defective, that the grant was obtained fraudulently and clandestinely, that the grant was obtained by means of untrue allegation, a fact essential in a point of law and finally that the person to whom the grant was made and confirmed is not able to proceed diligently with the administration of the estate.

The application was further grounded upon the affidavit of the applicant. When the application was served on the respondent, she responded by filing grounds of opposition which she later followed up with a replying affidavit. This was on 14th April 1999. Further supporting affidavits were filed by her six siblings (sons and daughters) in a bid to show that the applicant was a stranger to the estate of the deceased and that he was not at all a dependant of the deceased. That the respondent who is their mother was the only wife of the deceased and that she filed the succession cause in the Principal Magistrate's court at Embu with full their knowledge and consent contrary to the allegations by the applicant. Since then and for one reason or another the application for revocation of the grant had not been heard.

When the matter came up for hearing before me on the 28th June, 2007, **Mr. Muraguri**, Learned Counsel for the respondent indicated that he had a point of law to raise by way of preliminary objection. Counsel submitted that his point of law was premised on *Section 93* of the law of Succession Act. Counsel submitted that the anticipated revocation touches on a confirmed grant. That the said grant was confirmed on 2nd July, 1993. The first respondent herein registered herself as the proprietor of land parcel, **Konyu/Baricho/88** which she later sold and transferred to the 2nd respondent and a title thereafter issued. Since then the 2nd respondent has been in occupation of suit premises with a good title. To the learned counsel therefore proceeding with the application for revocation of the grant would be an exercise in futility in view of the express and mandatory provisions of *Section 93* of the law of Succession Act. That section mandatorily provides that the interest of a purchaser cannot be defeated by way of revocation of a grant.

Mr. Kiama, learned counsel for the applicant responded thus; that the estate to which the application relates is not limited to land parcel, **Konyu/Baricho/88** alone. There are other properties of the estate covered by the application. Counsel further submitted that *Section 93* of the law of Succession Act applies to a situation where the estate is sold by the Administrator in the exercise of Powers of Administration. That was not the case here.

I have carefully considered the point of law raised, the respective submissions of the counsel and it is my view that the preliminary objection raised cannot be sustained. *Section 93 (1)* of the law of succession act specifically provide and I quote:

“.....**A transfer of any interest in immovable or movable property made to a purchaser**

either before or after the commencement of this Act by a person to whom representation has been granted shall be valid, notwithstanding any subsequent revocation or variation of the grant either before or after the commencement of this act.

(2) Any transfer of immovable property by a personal representative to a purchaser shall not be invalidated by reason only that the purchaser may have notice that all the debts, liabilities, funeral and testamentary or administration expenses duties, legacies of the deceased have not been discharged nor provided for....”

The wording of this section is to my mind clear and unambiguous. It can only be subject to literal interpretation and for the purposes of this application, I think it is *Section 93 (1)* of the law of Succession Act that is pertinent. My interpretation of the section is that a transfer of any interest in immovable or movable property made to the purchaser by a person who has obtained letters of administration cannot be impugned by any subsequent revocation of the grant. That is to say, any subsequent revocation of the grant shall not affect a purchaser of the property if the sale of the property between the administrator of the estate and the purchaser was valid. It is clear to me that this section fully protects the 2nd respondent’s interest. He need not worry about the likely effect and or the outcome of the instant application for the revocation of the grant. From what I gather on the material before me, the 1st respondent was constrained to sell **Konyu/Baricho/88** to the 2nd respondent so as to service a bank loan that had been given out to her deceased husband prior to his death. The parcel of land currently in the 1st respondent family’s occupation was threatened with an auction in pursuit of the bank’s statutory powers of sale. In doing so and contrary to the submissions of the learned counsel for the applicant, she was acting in the exercise of her powers of Administration of the estate. Afterall she had been appointed the administrator to the estate. The sale between the respondent had everything to do with the administration of the deceased’s estate. It sought to preserve and protect the larger portion of the estate. Further and as correctly pointed out by the learned counsel for the applicant, the application for the revocation is not limited to this subject piece of land alone. It seeks the revocation of the grant in it’s entirety. There were other properties of the estate involved.

I must however emphasize that the gist of *Section 93* of the law of Succession Act is to protect purchasers for value of the properties arising out of succession proceedings. The 2nd respondent was one such person. His fear that he may lose the property in the event that the application for revocation of the grant is allowed is clearly unfounded. He can count on the protection enshrined in and afforded to him by *Section 93 (1)* of the law of Succession Act in case of such eventuality. Whatever the outcome his purchase and title to the suit premises will not be impugned and or disturbed at all. That being my view of the matter, I would dismiss the preliminary point of law taken by the 2nd respondent with costs to the applicant.

Dated and delivered at Nyeri this 16th Day of July 2007.

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M.S.A. MAKHANDIA

JUDGE