



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI**  
**SUCCESSION CAUSE NO. 50 OF 2001**

**IN THE MATTER OF THE ESTATE OF NGANGA KONGA (DECEASED)**

Issues:

- (1) Whether beneficiaries or personal representatives were applicants, in court, for certificates of Succession under the now repealed Section 120 of the Registered Land Act (Cap. 300).
- (2) Whether there can be proceedings, under the Law of Succession Act (Cap. 160), for revocation of grant where succession proceedings were conducted and completed under the now repealed Section 120 of the Registered Land Act.

**RULING**

This is a Notice of Motion dated 22nd November 2000 filed by the Applicant, Nderu Nganga, against the Respondents, Ngoiri Nganga, Njeri Nganga, Wahito Nganga and Hannah Munjiru Mberere praying for revocation of the certificate of succession issued on 12th June 1968 in the District Magistrate's Court at Githunguri in respect of Parcel of land registration No. Githunguri/Githiga /229 the estate of Nganga Konga also known as Mberere Konga. Alternatively the Applicant wants the court to refer this matter to be arbitrated by local elders.

The matter having been the subject in an existing judgment of a Court, I do not see the propriety of referring the matter to elders for arbitration as if there is no judgment of a court in existence. Properly, that judgment should be looked into by this Court, if there is no other court doing the same, as it is that judgment of the court that is being questioned by the Applicant who wants the certificate of succession, granted in that judgment and issued under the authority of that judgment, revoked. Those being my views, I rejected the alternative prayer and hearing of the Notice of Motion has proceeded pursuant to prayer number one.

I have heard submissions on both sides and as far as I can understand, the position in this matter is as follows:

Nganga Konga, also referred to as Mberere Konga, died on 18th August 1997 when he was the registered proprietor, under the Registered Land Act (Cap. 300 Laws of Kenya), of Parcel of land No. Githunguri/Githiga/229. Apparently that was the only parcel of land which was registered in his name under the Registered Land Act.

Following Nganga Konga's death, the Land Registrar applied for a certificate of succession in Succession Cause No. 29 of 1968 in the District Magistrate's court at Githunguri and his application was granted on 12th June 1968. Thereafter the Land Registrar gave effect to the terms of that certificate of Succession by

sub-dividing parcel of land No. Githunguri/Githiga/229 into 920, 921, 922 and 923 and by transferring 920 to Ngoiri Nganga, 921 to Njeri Nganga, 922 to Wahito Nganga and 923 to Hannah Munjiru Mberere all on 26th February 1969.

All that was properly done under the now repealed section 120 of the Registered Land Act under which the registration of beneficiaries as proprietors of their respective portions of land completed the process. It means therefore that while succession process to the estate of Nganga Konga was completed on 26th February 1969, the Applicant before me no waited until 23rd November, 2000 to file this Notice of Motion dated 22nd November 2000 in H.C.Civil Cases Division as Miscellaneous (Misc.) Application No. 1251 of 2000. On 15th January 2001 the Application was placed before Visram, then Commissioner of Assize, when he held that this was family matter and directed that it be heard in the Family Division.

That case file having been brought to the Family Division, a new case number being Succession Cause No. 50 of 2001 was assigned and a new case file opened and the matter handled as a summons for revocation of grant under the present provisions of the Law of Succession Act (Cap. 160 Laws of Kenya). The file in Succession Cause No. 29 of 1968 from Githunguri Magistrate's Court was brought and filed in this Division's Succession Cause No. 50 of 2001 which was eventually listed for hearing before me.

The application is brought by way of a notice of motion and that notice of motion is praying for revocation of a certificate of succession issued on 12th June 1968. Under which provisions of the law does the court grant that prayer? Neither the old law nor the new and present law would apply. The old law would not apply firstly because it had no provisions for summons for revocation and secondly, even if it had those provisions, it has been repealed. The present law would not apply because it cannot apply to proceedings conducted and completed under the old law.

It follows that these proceedings are not proper. Brought 33 years after the certificate of succession was granted, issued and effected. That is a long delay although the Applicant claims that he was not aware Nganga Konga had died and did not know when the Respondents applied for the certificate of succession and goes on to claim that the Respondents made the application secretly and fraudulently. He has not adduced evidence to prove the alleged secrecy and fraud.

In any case his blame against the Respondents is misplaced as they were not the Applicants for the certificate of succession. The Applicant was the Land Registrar who has not been made a party in this application.

But even accepting that the Applicant did not know that Nganga Konga had died and did not know that the application for a certificate of succession was being made, he is talking about a piece of land, which, according to his case, he knew he claimed interest in it and knew the land was registered in the name of Nganga Konga or Mberere Konga from the time of land consolidation. The process of Land Consolidation took sometime to complete and since the date of a first registration of parcels of land in Githunguri/Githiga registration section was 15th November 1958, it means land consolidation was completed in the first half of 1958, at the latest. Otherwise, before 1958.

For a period of at least 43 years the Applicant was not bothering about his interest in that piece of land. I use the words "at least" because, not only was the Applicant, his step mothers and step brothers, expected to make their claim during the life time of Nganga Konga after land consolidation but also during land consolidation when local elders were readily at hand to solve such claims. If the Applicant was young, not all his step brothers were and his two step mothers were definitely not young.

In other words if the Applicant's claim over parcel of land Githunguri/Githiga/229 is genuine, there were three important opportunities during which that interest should have been established:- and the Applicant registered as they registered proprietor.

First, was the time of land consolidation with local elders statutorily made available to handle and solve land ownership disputes. Second, was the time after land consolidation when the land had been registered in the name of Nganga Konga as Mberere Konga before he died. There is no evidence that the Applicant

or any of his step brothers or his step mothers approached Nganga Konga for a share in the disputed land. Third was during the land succession proceedings in court and the period following the issuance of the certificate of succession. All those opportunities passed without the Applicant or his step brothers or step mothers having made any claim for a share in the suit parcel of land.

It is at this belated time that the Applicant is coming up to give two versions of his claim story. The first version is given in his supporting and amended affidavit dated 8th December 2000. In that affidavit, where he does not mention the name Mberere Konga, his case is that the name of the husband of Respondents in this application is Nganga Konga, the same as the name of his father, and that his father and the husband of the Respondents were brothers being sons of Konga Nganga who owned parcel of land No. Githunguri/Githiga/229 and that the Applicant's father had four wives, that the Applicant's grandfather, the Applicant's father and his first two wives all died during the emergency when the Applicant was very young and his surviving two step mothers timid and that therefore during land consolidation and demarcation the share of Nganga Konga, the Applicant's father, was consolidated and or added together with the share of Nganga Konga, the husband of the Respondents and that that was on the express understanding of the entire family that the latter Nganga Konga would at a later date have the land partitioned into two equal divisions one for the family of the Applicant and the other for the family of the Respondent's husband, that due to frustration caused to the Applicant's family, that family moved to Nakuru in the Rift Valley Province, that after the Respondent's husband had died, the Respondents swiftly, secretly and fraudulently applied for and obtained a certificate of succession to the disputed parcel of land and have refused to share it out with the Applicant forcing him to file this application to have certificate revoked so that the Land Registrar is ordered to cancel the registration he had effected and have the suit land shared out equally between the Applicant on the one hand and the Respondents on the other in accordance with Kikuyu customary law.

During the hearing of the application, the Applicant changed his story to be that Nganga Konga is the name of his father only and that the husband of the Respondent was known by the name Mberere Konga only and that therefore the deceased referred to in this matter is Nganga Konga his father and that he does not know whether Mberere Konga also died and that his father Nganga Konga was not the husband of the Respondents, but when he, Nganga Konga, died, the Respondents secretly applied for a certificate of succession to parcel of land No. Githunguri/Githiga/229 which was owned by the Applicant's father Nganga Konga and they obtained the certificate of succession and shared out that land leaving out the Applicant. That is Succession cause No. 29 of 1968 in Githunguri court.

A copy of the relevant land register shows a correction of name of the registered proprietor from Mberere Konga to Nganga s/o Konga, on 23rd June 1964 and the Applicant has claimed that sons of the Respondents made that correction. That claim has no merits because by that time Mberere Konga was alive and no person could be allowed to deal with someone else's registered parcel of land under the Registered Land Act even if that dealing was a correction of name.

In any case, the above summary brings out the Applicant's inconsistent story which the Respondents had to counter stating that while the name of their husband was Mberere Konga, he was also known as Nganga Konga. He owned parcel of land No. Githunguri/Githiga/229 having been consolidated, during land demarcation and consolidation, from three separate portions, two of them bought and one inherited from his father Konga Kiunga or Konga Muraya. Documentary exhibits produced show that Mberere Konga officially owned the suit parcel of land from 15th November 1958 and the Respondent's case is that when Mberere Konga who had corrected his name to read Nganga Konga on 23rd June 1964 died in August 1967, they caused the Land Registrar to apply for the Certificate of Succession to that parcel of land. They obtained that certificate and had that piece of land shared out between them. They said they did not know the Applicant and had never seen him until they came to this court for this application. They add that the Succession Cause in Githunguri Court was done openly and strictly in accordance with the law and that the Applicant has no right over the suit parcel of land and aver that his application should be dismissed.

As I do not have one consistent story from the Applicant with which to confront the story given by the Respondents, I do hereby reject the Applicant's case for being inconsistent.

From what I have been saying above therefore, I think I have sufficient reasons to refuse to grant the applicant's application. Accordingly the Notice of Motion herein dated 22nd November 2000 be and is hereby dismissed with costs to the Respondents.

Dated, delivered and signed at Nairobi this 22nd day of March, 2002.

**J.M. KHAMONI**

**JUDGE**