



In re Estate of Baini Ngati alias Baini Ngati Murama (Deceased) (Miscellaneous Succession Cause E014 of 2022) [2024] KEHC 2232 (KLR) (6 March 2024) (Judgment)

Neutral citation: [2024] KEHC 2232 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT CHUKA
MISCELLANEOUS SUCCESSION CAUSE E014 OF 2022**

LW GITARI, J

MARCH 6, 2024

**IN THE MATTER OF THE ESTATE OF THE LATE BAINI
NGATI ALIAS BAINI NGATI MURAMA (DECEASED)**

BETWEEN

JANE CIAMATI APPLICANT

AND

BETH KANINI MUGUIKA RESPONDENT

JUDGMENT

1. This succession cause relates to the estate of the late Baini Ngati alias Baini Ngati Murama (deceased) who died intestate on 31st March, 1984.
2. Before this Court is the summons application dated 23rd May, 2022 seeking the revocation of letters of administration issued to the Petitioner herein as well as the costs of the application.
3. The application is supported by the affidavit sworn by the Applicant on 23rd May, 2022. The Applicant deposed that the deceased sold 1 (one) Acre of land from L.R. No. Magumoni/Thuita/33 to her in 1979 and that the present application seeks revocation of the grant issued to the Respondent based on the distribution of the said land.
4. The Applicant avers that after the deceased sold her the aforesaid parcel of land, she started developing the said land. That subsequently, the deceased was sued by his biological brother, one Zacharia Mbiuki, in Chuka High Court Civil Suit No. 73 of 1980 where Judge Okubasu, as he then was, awarded 4 (four) acres out of the 8 (eight) Acres in L.R. No. Magumoni/Thuita/33 to the said Zacharia Mbiuki.
5. According to the Applicant, L.R. No. Magumoni/Thuita/33 was subsequently subdivided into L.R. No. Magumoni/Thuita/968 and L.R. No. Magumoni/Thuita/969 and allocated to the deceased and Zacharia Mbiuki respectively. She stated that the 1 (one) Acre that she had been allocated by the



deceased formed part of the 4 (four) Acres that had been awarded to Zacharia Mbiuki. That however, the deceased died before the 1 (one) Acre that she was allegedly allocated was distributed to her.

6. The application is opposed by the Petitioner/Respondent herein vide the Replying Affidavit sworn by herself on 6th December, 2022. She deposed that she is the wife of the deceased. Further, she acknowledged that the Applicant purchased a 1 (one) Acre piece of land from the deceased. According to her, the original suit land, L.R. No. Magumoni/Thuita/33, was fraudulently subdivided by Zacharia Mbiuki to form L.R. No. Magumoni/Thuita/968 and L.R. No. Magumoni/Thuita/969 and that since Zacharia Mbiuki is also now deceased, it is her proposal the beneficiaries of Zacharia Mbiuki should be summoned to court so that the matter can be solved amicably.

Analysis

7. The circumstances under which a grant of representation may be revoked are provided for under Section 76 (a)-(e) of the *Law of Succession Act* and include;
 - a. Where the proceedings to obtain the grant were defective in substance;
 - b. Where 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;
 - c. Where the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently;
8. The grant issued to the Respondent in respect of the subject estate was confirmed on 19th March, 2014 in the following terms:

Name Description of Property Share

- i. Beth Kanini Muguika Magumoni/Thuita/33 2 ½ Acres
 - ii. Albert Mugendi ” 1 Acre
 - iii. Absolom Mungai ” 1 Acre
 - iv. Geoffrey Munene ” 1 Acre
 - v. Madiresi Kagwiria ” 1½ Acres
 - vi. Susan Kageni ” 1 Acre
9. It is not in dispute that the original title to the suit land was L.R. No. Magumoni/Thuita/33. It is also not in dispute that the said original parcel of land was subdivided into two parcels of land and shared between the deceased and his brother, the late Zacharia Mbiuki. The Petitioner/Respondent has further acknowledged the Applicant’s contention that the deceased sold 1 (one) Acre of the original parcel of land to the Applicant herein. Considering that the Respondent had indicated that the whole of L.R. No. Magumoni/Thuita/33 formed part of the estate of the deceased, that in itself constitutes a statement made untruthfully and in concealment of material facts in relation to this cause. Furthermore the respondent admitted that the land had been sub-divided and there were two resultant Parcels No.968 & 969. This means that the grant is in capable of being effected as Land Parcel No. Magumoni/Thuita/33 was sub-divided and the title deed had been cancelled and closed on sub-division. The respondent did not disclose that the deceased had sold one acre to the applicant before his demise despite the fact that this fact was within her knowledge. The court is mandated to revoke a grant where it is proved 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. This forms a ground upon which the court may order revocation of the grant under Section 76 of *Law of Succession Act (supra)*.

In *L.A.K (deceased)* 2014 eKLR cited by the applicant, it was stated that; “Revocation of grants is governed by Section 76 of the *Law of Succession Act*. A grant may be revoked where the proceedings leading upto to its making were defective or were attended by fraud and concealment of important matter or was obtained by an untrue allegation of a fact essential to the point.”

It is clear from the proceedings and the admission by the respondent that she concealed facts which were known to her and misled the court to issue a grant which distributed the purported estate of the deceased which did not exist.

Conclusion

10. It is therefore my view that the grant issued and confirmed to the Respondent is ripe for revocation for the reasons given herein above. As such the present application for revocation of grant is merited. I order that :

1. The grant issued to the respondent on 26/9/2013 and confirmed on 19/4/2014 is revoked.
2. Costs to the applicant.

DATED, SIGNED AND DELIVERED AT CHUKA THIS 6TH DAY OF MARCH 2024.

L.W. GITARI

JUDGE

