



REPUBLIC OF KENYA



**In re Estate of John Rennie Carrie Gordon alias Rennie Carries (Deceased)
(Succession Cause 1057 of 2009) [2024] KEHC 4759 (KLR) (18 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 4759 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
SUCCESSION CAUSE 1057 OF 2009**

MA ODERO, J

APRIL 18, 2024

**IN THE MATTER OF THE ESTATE OF JOHN RENNIE
CARRIE GORDON ALIAS RENNIE CARRIE (DECEASED)**

RULING

1. Before this court for determination is the Summons for revocation of Grant dated 20th January, 2023 by which the Applicant Joseph Weru Maina seeks the following orders:-

- “1. Spent
2. Spent
3. Spent
4. That the grant of probate to Chris Githinji Rwengo (the executor) and confirmed on 20th September, 2019 be revoked by the Honourable Court.
5. That this Honourable court be pleased to issue an order inhibiting the registration of any dealings with land title numbers LR No. 8343/5 and/or the resultant 51 parcels from LR No. 8343/299/3 to LR No. 8349/349, both titles inclusive, pending the hearing and determination of this Application.
6. That the honourable court be pleased to issue an order restraining the Respondent from charging, leasing, transferring or in any other manner interfering with and/or dealing with land title numbers LR. No. 8343/5 and/or the Resultant 51 parcels from LR. No. 8343/299/3 to LR No. 8349/349 both titles inclusive, pending the hearing and determination of this Application.
7. That the costs of this Application be borne by the Respondents.”



2. The application was premised upon Section 68 of the Land Registration Act, Sections 47, 76 (a), and (b) of the Law of Succession Act, Cap 160, Laws of Kenya and Rules 44, 49, 59 (5) of the Probate and Administration Rules and was supported by the Affidavit of even date sworn by the Applicant.
3. The Respondent/Executor Chris Githinji Rwengoo opposed the application through the Replying Affidavit dated 3rd March, 2023 and the Further Affidavit dated 24th July, 2023.
4. The matter was canvassed by way of written submissions. The Applicant filed the written submissions dated 24th July, 2023 whilst the Respondent relied upon his written submissions dated 4th August, 2023.

Background

5. This succession cause relates to the estate of the late John Rennie Carrie Gordon alias Gordon Rennie Carrie (hereinafter referred to as 'the Deceased') who passed away on 1st September 2009. A copy of the Death Certificate Serial No. 213971 is annexed to the Petition for Grant of Probate of written will dated 26th November, 2009.
10. The Deceased died testate having left behind a written will dated which written will was contested.
11. The matter has been in court for several years. Finally a Grant of Probate was issued to the 1st Respondent Chris Githinji Rwendo on 1st April, 2011. That Grant was duly confirmed on 20th September, 2019 and a certificate of confirmation of Grant issued pursuant to a consent dated 19th March, 2018.
12. The Applicant now seeks to have that confirmed Grant revoked. The Applicant complains that under the confirmed Grant the property known as LR No. 8343/5 (hereinafter 'the Suit Property') was to devolve to the Executor to hold for himself and in trust for Elizabeth Waruguru Gordon (the 2nd Respondent) and Moses Ian Gordon (the 3rd Respondent) in equal shares.
13. That the said property was subsequently transferred from the Deceased's name to the Respondent's in line with the certificate of confirmed Grant and that the property has undergone change of user from agricultural land and has been subdivided into fifty one (51) plots of various acreages being LR Nos 8343/299/3 to LR 83491349.
14. The Applicant claims that prior to the filing of this succession cause he purchased two (2) quarter acre ($\frac{1}{4}$ acre) plots from the suit property vide a Sale Agreement dated 21st December, 2009 for Kshs. 700,000. That despite having been assured that they would be included in the Succession cause the Applicant and the other purchasers were shocked to realise that the Grant was confirmed in the name of the Executor excluding their interest.
15. The Applicant states that he has now learnt that the suit property is being advertised for sale yet he is still to receive the share that he had purchased.
16. The Applicant accuses the Executor of failing to inform him of the existence of this Succession cause despite being aware of his interest as a purchaser and further accuses the executor of failing to administer the estate in line with his mandate under the Law of Succession Act. For these reasons the Applicant prays that the Grant issued to the Executor be revoked /annulled.
17. As stated earlier the application was opposed. The Executor states that he is aware of the sale Agreement dated 21st December, 2009 and argues that the sale was not concluded as the Applicant only paid a deposit of Kshs. 200,000 towards the purchase of the two (2), quarter acre ($\frac{1}{4}$ acre) plots.



18. The Executor avers that he has maintained constant communication with the Applicant with a view to concluding payment of the entire purchase price, but that the balance of the purchase price was never paid.
19. That since the Applicant has been reluctant to pay the balance of Kshs. 600,000 the suit property remained estate property and the executor was entitled to deal with the same as such.
20. The Executor further argues that the Applicant has no determinable interest in the estate and that in any event his claim (if any) ought to be handled by the Environment and Land Court.

Analysis and Determination

21. I have carefully considered the application before this court, the reply filed thereto as well as the written submissions filed by both parties.
22. The Applicant has prayed to have the Grant confirmed in favour of the Executor on 20th September, 2019 revoked. The first issue this court has to consider is whether the Applicant has 'locus standi' in this Succession cause.
23. The term 'locus standi' is a latin term which literally means 'place of standing' and refers to the right of an individual or party to be heard in a particular matter.
24. In *Law Society of Kenya -vs- Commissioner of Lands & others* [2000] eKLR the court stated
"Locus standi signifies a right to be heard. A person must have sufficiency of interest to sustain his standing to sue in a court of law"
25. Similarly in the case of *Alfred Njau & others -vs- City Council of Nairobi* [1982] KAR 229 it was held that
"The term locus standi means a right to appear in Court and conversely to say that a person has no locus standi means that he has no right to appear or be heard in such case and such proceedings"
26. This court is sitting as a Probate Court whose sole mandate is to distribute the estate to the genuine heirs. The Applicant is not a direct beneficiary to the estate of the Deceased. He has described himself as a "purchaser." A purchaser is Not a beneficiary and does not have any interest in the estate of a Deceased person. Any claim such a purchaser may have to estate land and/or property must be pursued through a Civil Claim not by insinuating himself into the succession cause.
27. The Applicant is neither an heir nor a dependant of the Deceased. He has no locus standi in this succession cause.
28. The grounds upon which a Grant may be revoked are provided for by Section 76 of the *Law of Succession Act* Cap 160 Laws of Kenya which provides as follows:
A grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by any interested party of its own motion.
 - a. That the proceedings to obtain the grant were defective in substance;
 - b. 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;



- c. That 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;
 - d. That the person to whom the grant was made has failed, after due notice and without reasonable cause either:-
 - i. To apply for confirmation of the grant within one year from the date thereof, or such longer period as the court has ordered or allowed; or
 - ii. To proceed diligently with the administration of the estate; or
 - iii. To produce to the court, within the time prescribed, any such inventory or account of administration as is required by the provisions of paragraphs (e) and (g) of section 83 or has produced any such inventory or account which is false in any material particular; or
 - iv. The grant has become useless and inoperative through subsequent circumstances.
29. The Applicant is claiming a share or part of the estate of the Deceased. He alleges to have purchased two (2), quarter acre (1/4) plots to be excised from LR No. 8343/5. The said property was registered in the name of the Deceased. No transfer of the suit land to the Applicant had taken place before the demise of the Deceased.
30. The only remedy now available to the Applicant is to sue the Executor in a Civil Case or to file a suit before the Environment and Land Court in order to claim the land in question.
31. Matters relating to the ownership use and occupation of land have now under Article 162 of the Constitution of Kenya 2010 been mandated to be determined by a specialized court being the Environment and Land Court ('ELC').
32. Section 13 of the Environment and Land Court Act provides for the jurisdiction of that court as follows:-
13. Jurisdiction of the Court
- (1) The Court shall have original and appellate jurisdiction to hear and determine all disputes in accordance with Article 162(2)(b) of the Constitution and with the provisions of this Act or any other law applicable in Kenya relating to environment and land.
 - (2) In exercise of its jurisdiction under Article 162(2)(b) of the Constitution, the Court shall have power to hear and determine disputes –
 - (a) relating to environmental planning and climate issues, land use planning, title, boundaries, rates, rents, valuations, mining and other natural resources;
 - (b) relating to compulsory acquisition of land;
 - (c) relating to land administration and management



- (d) relating to public, private and community land contracts, choses in action or other instruments grant any enforceable interests in land;
- (e) any other dispute relating to environment and land”

33. Therefore, the correct and proper forum before which the Applicants ought to ventilate their claim to the suit land is the ELC. The Environment and Land Court is the only court exclusively mandated by law to determine the question of ‘ownership’ of the suit land.

34. In *Re Estate of Stone Kathubi Muinde (deceased)*[2016] eKLR Hon Justice William Musyoka held that:-

“Such claims to ownership of alleged estate property, as between the estate and a third party, should be resolved through the civil process in a civil suit property brought before a civil court in accordance with the provisions of the *Civil Procedure Act* and the *Civil Procedure Rules*. This could mean filing suit at the magistrates’ courts, or at the Civil or Commercial Divisions of the High Court, or at the Environment and Land Court. If a decree is obtained in such suit in favour of the claimant then such decree should be presented to the probate court in the succession cause so that that court can give effect to it.” (own emphasis)

Conclusion

35. Finally I find no merit in this application. There is no evidence that the executor breached or acted outside the terms of his mandate in administering the estate. I find that no valid grounds have been advanced to have the confirmed Grant revoked.

36. Accordingly I dismiss the Summons dated 20th January, 2023 in its entirety. Costs will be met by the Applicant.

DATED IN NYERI THIS 18TH DAY OF APRIL, 2024.

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MAUREEN A. ODERO

JUDGE

