



In re Estate of Baigweta Nkuma (Deceased) (Succession Cause 4 of 2019) [2024] KEHC 6521 (KLR) (2 May 2024) (Ruling)

Neutral citation: [2024] KEHC 6521 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT CHUKA
SUCCESSION CAUSE 4 OF 2019
LW GITARI, J
MAY 2, 2024
(FORMERLY MERU SUCCESSION CAUSE NO. 318 OF 2009)
IN THE MATTER OF THE ESTATE OF BAIGWETA NKUMA
(DECEASED)**

BETWEEN

NGAI NKUMA BAIGWETA RESPONDENT

AND

PAUL NYAGA NKUMA ADMINISTRATOR

RULING

1. This matter relates to the estate of Mutea Baigweta (deceased). The matter which was pending before this court was a summons for revocation of grant which is dated 19/9/2022. The background of the matter is that the deceased died on 13/3/1993. A grant of letters of administration was issued to Ngai Nkuma Baigweta on 3/4/2004 and confirmed on 6/10/2007.
2. A summons for revocation of grant was filed by Paul Nyaga Nkuma. When the matter came up for directions on 4/6/2019, the parties agreed to have the said grant revoked and a fresh grant to be issued. The Judge ordered that the grant be revoked by consent and a fresh grant was issued to Ngai Nkuma and Paul Nyaga. The Judge further ordered that all changes made to the estate pursuant to the said revoked grant shall be reversed and the properties shall revert back to the estate of the deceased (that is, to revert back to the name of the deceased) pending the determination of the Succession Cause. The appointed administrators were ordered to move the court for the confirmation of the said grant before the expiry of the Statutory period in view of the age of the Succession Cause.
3. The administrators complied and filed a summons for confirmation of grant. Thereafter the parties filed a consent dated 4/7/2019 and the same date the consent was adopted as the order of this court. The terms of the consent were as follows:-



By Consent:-

1. The properties of the deceased be shared as follows among the beneficiaries of the estate:-
 - A. Land Parcel Number Karingani/Muiru/1247Agribina Mukwairu Riungu - $\frac{1}{4}$ Elestesteria N. Gakuri - $\frac{1}{4}$ Paul Nyaga Nkuma and John Murithi Gitari- $\frac{1}{2}$
 - B. Land Parcel No. Muthambi/L. Karingani/150Henry Ngai Nkuma
 - C. Land Parcel No. Karingani/Muiru/549Paul Nyaga Nkuma and John Murithi Gitari- 5 Acres (to hold in trust for the 1st family.Henry Ngai Nkuma - balance
 - D. Land Parcel No. Mariani Adj. Section F/No 423Equal shares- to all the 11 children of the deceased.
 - E. Plot No. 7b Thuci MarketTo be sold and the proceeds shared equally between all the children of the deceased.
 - F. Plot No. 15 Kajuki MarketTo be sold and the proceeds shared equally between all the children of the deceased.

There followed a summons for Revocation of Grant dated 19/9/2022 and filed in court on 20/9/2022. The parties consented to have the matters referred to Court Annexed Mediation by a court appointed mediator.

4. The parties appeared before the mediator who heard the parties and filed a mediation agreement. The parties could however not agree on Land Parcel No.549 and urged the court to intervene and distribute the same. The court heard the objections to the award and that is the matter pending before this court.
5. Anselimina Mukwanjagi Ngai filed affidavit evidence sworn on 16/1/2024. No other party filed an affidavit with respect to the distribution of land Parcel No. Karingani/Muiru/549. The protestor Anselimina Mukwanjagi Ngai contends that the late Ngai Nkuma Baigweta died after the distribution of the estate and had incurred a lot of expenses in the Land Disputes and sub-division process and it had been agreed that he would get a larger share in Land Parcel No. Karingani/Muiru/549. That after the demise the applicants changed their minds and said that the Land Parcel Karingani/Muiru/549 should be shared equally. That the family led by Paul Nyaga and their lawyer together with the late Ngai Nkuma and his lawyer agreed that Land Parcel No. Karingani/Muiru/549 be distributed as follows:- Paul Nyaga Nkuma - 5 acres (to hold in trust for the familyAnselimina Mukwanjagi Ngai & Fredrick Kimathi – Balance (to hold in trust for the late Ngai Nkuma)
6. I have considered the objection. The issue which this court has to determine is the made of distribution of the Land Parcel No. Karingani/Muiru/549.
7. This is an old matter which dates back to 2009 and should be finalized and the matters to come to rest. This matter was settled by consent during the lifetime of the late Ngai Nkuma Baigweta. The said Ngai Nkuma and Paul Nyaga were appointed as administrators upon the revocation of the initial grant. Thereafter, they entered a consent dated 4/7/2019 which was adopted as the order of this court. As per the consent Paul Nyaga Nkuma and John Murithi Gitari were to get five (5) acres (to hold in trust for the 1st family while Henry Ngai Nkuma was to get the balance. The question the court has to determine is whether the court should set aside the consent order. For a Judgment entered by the consent of the parties to be set aside, a party seeking to set aside must demonstrate that the Judgment was obtained through fraud, collusion, or by an agreement contrary to the Policy of the court or was



given without sufficient material facts. It may also be set aside for any other reason which the court decides is sufficient to set aside an agreement. This has been held by courts when determining the issue of setting aside consent Judgment.

8. In *Samson Munikah Practicing as Munikah & Co. Advocates -v- Wedube Estates Limited Nairobi* C.A No. 126 of 2005. (as quoted with approval in *Wambada -v- Elizabeth Sinjeyi Shava and Eldoret Hospital, Interested Party* 2020 eKLR) . The court stated:-

“The appeal raises the vexed question (of) what are the circumstances in which a consent – Judgment may be set aside? In *Brooke Bond Liebig (T) Ltd -v- Mallya* (1975) E.A 226, the then Court of Appeal for East Africa set out the circumstances in which a judgment freely entered into by parties to a dispute in court would be set aside:-

“The circumstances in which a consent Judgment may be interfered with were considered in *Hirani-v- Kassan* (1952) 19 E.A. C.A 131 where the following passage from Section on Judgment and orders 7th Edition Vol.1, P. 124 was approved:

“*Prima facie* any order made in the presence of the counsel is binding on all parties to the proceedings or action and on those claiming under them and cannot be varied or discharged unless obtained through fraud or collusion or by an agreement contrary to policy of the court if the consent was given without sufficient material facts, or in general for a reason which would enable the court to set aside an agreement.”

For his part Ag. Vice President, Mustafa had this to say:

“The compromise agreement was made an order of the court and was thus a consent Judgment. It is well settled that a consent Judgment can be set aside only in a certain circumstances, e.g on the ground fraud or collusion, that there was no consensus between the parties, public policy or for such reasons as would enable the court to set aside or rescind a contract. In this case the parties and their advocates consented to the compromise in every clear terms; they were certainly aware of all material facts and there could have been no mistake or misunderstanding.’

9. It is clear from these binding decision that a court cannot interfere with a consent Judgment except in such circumstances as would afford good ground for varying or rescinding a contract. The consent by the parties once adopted by the court as the Judgment of the court is binding to all the parties. As I have observed above, when the parties appeared before Justice Limo represented their counsels on record, they informed the Judge that they had reached a consent. The Judge then proceeded to adopt the consent as the order of the court. There is no allegation of fraud, collusion or that the agreement was against Public Policy. It is trite that there must be an end to litigation. The consent reached with respect to Land Parcel No. Karingani/Muiru/549 was lawfully entered and conclusively determined the issue of distribution of the said land parcel. The applicants were represented by the respondents who were appointed by court to be the administrators of the estate. Their decision was therefore binding on all the parties and the court cannot set it aside if the conditions that would have a contract set aside have not been met. The applicant has not proved that there was collusion nor has she alleged a fraud. The fact that the said administrator is now deceased does not give her a greenlight to set aside the consent Judgment. I find that her objection to the consent Judgment is misplaced and has no basis. I dismiss the objection. It is also noted that the consent was adopted as the Judgment by a Judge of concurrent



jurisdiction. There was no appeal. I have no jurisdiction to set aside the orders issued by Justice Limo. The objection is therefore not properly before this court.

Conclusion:

10. I order that:

The distribution of Land Parcel No. Karingani/Muiru/549 shall be as per the consent which was adopted as the Judgment of this court, that is:

- i. Paul Nyaga Nkuma and John Murith Gitari family- 5 acres (to hold in trust for the first family)
- ii. Henry Ngai Nkuma – balance (now represented by Anselimina Mukwanjagi Ngai & Fredrick Kimathi) to hold in trust for the late Ngai Nkuma’s family.

Each party to bear its own costs.

DATED, SIGNED AND DELIVERED AT CHUKA THIS 2ND DAY OF MAY 2024.

L.W. GITARI

JUDGE

The ruling has been read out in open court.

