



REPUBLIC OF KENYA



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**In re Estate of Luka Thambu Rintaugu (Deceased) (Succession Cause
288 of 2000) [2024] KEHC 9017 (KLR) (25 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 9017 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
SUCCESSION CAUSE 288 OF 2000**

EM MURIITHI, J

JULY 25, 2024

IN THE MATTER OF THE ESTATE OF LUKA THAMBU RINTAUGU (DECEASED)

BETWEEN

MATTHEW GITUMA PETITIONER

AND

COSMAS MURIUNGI THAMBO RESPONDENT

RULING

1. By Summons under certificate of urgency dated 7th December 2023 the Applicant seeks,
 1. Spent
 2. That the Honorable Court do reinstate or issue Grant in this cause and/or review, vacate, and/or set aside the orders issued on 15th October 2009.
 3. That the Honorable Court do grant status quo orders in respect of Plot No. 69 “B” Mikinduri pending hearing and determination of the application.
 4. That cost of the application be provided for.
2. The grounds upon which the application is premised are set out in the body of the application and supporting affidavit of Mathew Gituma, the Applicant herein, sworn on even date. He avers that he filed an application dated 29/11/2021 seeking confirmation of the grant, but the court ordered them to await the determination of Meru ELCA No. E121 Of 2021. The judgments in Tigania PMCC ELC NO. 9/2017 and Meru ELCA No. E121/2021 revolve around the question of the revoked certificate of confirmation of grant which gave ownership rights to him and the property is dispute namely PLOT NO. 69 “B” Mikinduri was initially owned by his father Luka Thambu Rintaugu. He was jointly registered as the owner of the plot with John Gitonga Mutuma, but the Respondent, who is his nephew fraudulently took minutes extract dated 18/9/2007 after he had done transfer two months.



The Respondent does not show how and when Ann Kathwana Thambu was the registered owner of the plot as against her husband, the deceased herein. He wants the court to determine whether the said plot forms part of the estate of the deceased and who its beneficiaries are.

3. The Applicant swore a supplementary affidavit on 4/3/2024 in support of his application.
4. The Respondent opposed the application vide his replying affidavit filed on 28/2/2024. He avers that the judgment in ELCA No. 21/2021 was delivered on 29/11/2023 and the grant applied for was revoked on the grounds that the proceedings to obtain it were defective in substance. The ownership of plot No. 69 B Mikinduri was exclusively determined in ELC No. 9/2017 and confirmed in ELCA No. 21/2021. He prays for the dismissal of the application with costs.

Submissions

5. The Applicant urges that the disputed plot forms part of the estate of the deceased, and thus the grant ought to be reinstated.
6. The Respondent faults the Applicant for failing to demonstrate why the revoked grant ought to be reinstated. He urges that the judgment of the trial court is concise and precise that the Applicant obtained change through fraud. He urges that the balance of convenience lies in favour of refusing the application which has been overtaken by events.

Analysis and determination

7. In order to succeed in his quest for review, the Applicant is required to establish to the satisfaction of the court any one of the following three main grounds as stipulated under Order 45 of the Civil Procedure Rules:
 - i. That there is discovery of new and important evidence which was not available to the applicant when the judgment or order was passed despite having exercised due diligence; or
 - ii. That there was a mistake or error apparent on the face of the record; or
 - iii. That sufficient reasons exist to warrant the review sought. In addition to proving the existence of the above grounds, the applicant must also demonstrate that the application was filed without unreasonable delay.”
8. The Applicant contends that the grant ought to be reinstated because the DCIO carried out investigations which exonerated him from any fraudulent acts. On his part, the Respondents contends that the disputed plot rightfully belongs to him after the trial court and the ELC Court pronounced themselves on the matter.
9. This court (W. Ouko J, as he then was) in its ruling of 15/10/2009 ruled:

“ As I have already stated, the grant was confirmed on 11th March, 2002. Thereafter on 10th September, 2003, by summons the petitioner sought to rectify the grant by amending parcel No. KINOE/Mikinduri F.NO. 5366 to read 5111 and plot No. 94 rectified to read 9(A). When that application came before Sitati, J, she immediately noted that there was discrepancy between the certificate of confirmation in the file and the one the petitioner was relying on in the application. She sought an explanation which was not given at all. The present application was then filed. The petitioner having failed to explain how two certificates of confirmation were issued on the same day in respect of the same estate cannot



benefit from his confusion. One of the two certificates was obtained fraudulently. In view of the seriousness of the matter, apart from revoking the grant, as I hereby do, I order that the matter be reported to the D.C.I.O, Meru (Police Station) for investigations.”

10. The Respondent (the plaintiff in the trial court) sued the Applicant (the 1st defendant in the trial court) and the trial court in its judgment of 9/11/2021 rendered thus:

“However the plaintiff’s name was cancelled after the 1st defendant availed a copy of the certificate of confirmation of grant herein dated 11/3/2022. On the strength of that grant, the 1st defendant name was inserted instead. However, the county council became aware that the said grant which was used to register the 1st defendant as a proprietor had been revoked by the court and the CID ordered to investigate the same. That narration of events means that the 1st defendant is registered as an owner of the suit land due to a certificate of confirmation of grant that has since been revoked for possible fraud. It was therefore erroneous illegal and potentially fraudulent act which caused that 1st defendant name to be inserted as a proprietor. Since he has no other form of ownership of the suit land, his name ought to be cancelled from the register as an owner of that land. On a balance of probabilities, the plaintiff has proved his claim. Prayer (a) (b) (c) and (d) of the plaint are granted as against 1st defendant.”

11. Dissatisfied with the trial court’s decision, the Applicant lodged ELCA No. 21/2021 where the court (C.K Nzili J.) vide its judgment of 29/11/2023 rendered thus:

“24. Where a land title is in question, every step towards its acquisition becomes crucial. See Dr. Joseph Ngok vs. Justice *Moiyo Ole Keiwua & 4 others Nrb C.A 60 of 1997*, Hubert L. Martin & 2 others vs. Margaret J Kamar & 5 others (2016) eKLR and Munyu Maina vs. Gathiha Maina C.A No. 239 of 2004. The respondent produced exhibits to sustain his pleadings that land registration in the county council records came after he had met the stipulated terms and conditions. The appellant did not object to the said documents. The probate court revoked the grant issued to the appellant. 25. Fraud includes using deceitful means or a knowing misrepresentation of the truth or concealment of a material fact to induce another to act to their detriment. See Black’s Law Dictionary 9th edition, page 731. The appellant had represented a fake confirmation of grant. With such misrepresentation demonstrated by the respondent and in the absence of superior evidence, the appellant cannot be heard to say he had a better title than the respondent. See Alice Chemutai Too vs Nickson Kipkurui Korir and others (2015) eKLR. 26. The appellant wrongfully deprived the respondent of his property using a revoked confirmed grant. He cannot be heard to justify his illegal occupation. A.G vs Halal Meat Product Ltd (2016) eKLR. The upshot is that the appeal is incompetent and lacks merits. It is hereby dismissed with costs.”

12. This matter having been determined with finality by the Environment and Land Court, as the court, with original jurisdiction on land matters, cannot be relitigated here again, by a succession court. The proper course of action for the Applicant is to appeal to the court of appeal or seek review in the Environment and Land Court. This Court cannot properly reopen the question of ownership of the suit plot after the Environment and Land Court has ruled on the matter. In accordance with Article 165(5) and (6) the High Court does not supervise the Environment and Land Court and it is not an



appellate court for purposes of the decisions of the ELC, which is a court of Equal Status with the High Court under Article 162 of *the Constitution*.

13. This court finds that the review sought by the Applicant, whose import is to reinstate a certificate of confirmation of grant, which was revoked by a court of competent jurisdiction on the basis of being obtained fraudulently, does not fall within the ambit of Order 45 of the Civil Procedure Rules.

Orders

14. Accordingly, for the reasons set out above, the application dated 7/12/2023 is without merit and it is dismissed.
15. There shall be no order as to costs.

Order accordingly.

DATED AND DELIVERED ON THIS 25TH DAY OF JULY 2024.

EDWARD M. MURIITHI

JUDGE

Appearances:

Mr. J. Mwititi for the petitioner.

Mr. Cosmas Muriungi, the Respondent in person.

