



In re Estate of Richard Kigonda Kigera (Deceased) (Succession Cause 192 of 2013 & 114 of 2011 (Consolidated)) [2024] KEHC 10955 (KLR) (18 September 2024) (Judgment)

Neutral citation: [2024] KEHC 10955 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT EMBU
SUCCESSION CAUSE 192 OF 2013 & 114 OF 2011 (CONSOLIDATED)
LM NJUGUNA, J
SEPTEMBER 18, 2024
IN THE MATTER OF THE ESTATE OF RICHARD KIGONDU KIGERA (DECEASED)**

BETWEEN

AMBROSE NJIRU NTHIGA APPLICANT

AND

ABRAHAM NJUE RICHARD PETITIONER

JUDGMENT

1. The applicant filed summons dated 25th September 2013 seeking revocation of the grant that was issued to the petitioner on 15th December 1995. The grounds for revocation are that the grant was obtained by making of a false statement or by concealment from the court of something material to the estate and that the proceedings to obtain the grant were defective in substance.
2. It was the applicant's case that when the petitioner petitioned for the grant, he failed to disclose to the court that the land was the subject of Land Adjudication Appeal No. 145 of 1995 which was later the subject of Misc. Civil Application No.31 of 2004. That the petitioner failed to disclose that the applicant and other members of the clan are residing on and have developed parcel numbers Mbeere/Kirima/335,1402, 1403, 1404, 1569, 1570, 1571, 1572, 1573, 1574, 1575 and 1576. That the petitioner rushed through the succession proceedings and then disposed some of the properties to third parties.
3. The applicant stated that after he lost the case before the tribunal at the Minister's appeal stage, he filed judicial review proceedings through which the Minister's decision was set aside and the properties reverted back to the applicant and the other clan members. Regardless, in the pendency of the Minister's appeal, the petitioner instituted succession proceedings and had the land distributed to his family members who have since disposed the land to third parties. He produced a copy of the judgment delivered on 30th May 2005 in the judicial review proceedings where the court set aside the



findings of the Minister in the tribunal case. He deposed that the only way to recover the land is by revoking the grant and ordering that the land revert to the name of his deceased father.

4. The petitioner filed a replying affidavit in which he stated that the land in question was registered in the name of his father, the deceased, without any encumbrances and it was rightly distributed to the beneficiaries of the estate of the deceased through succession. That the applicant is not a member of the Mwitia clan and he comes from Mbandi clan. That the beneficiaries took up the land and have been utilizing it since. Further, that he was not a party to the Land Adjudication Appeal no 145 of 1995 and HCMisc. Civil Application no. 31 of 2004 which were filed long after he had obtained the grant in the estate of the deceased.
5. That the applicant's attempt to have the land registered in his name was rejected by the court in HCMisc. Civil Application no. 31 of 2004 and he produced a copy of the court's ruling. He stated that the applicant has not enjoined the persons currently registered as proprietors of the land and yet the orders sought may end up affecting their ownership of the property. That it is suspect that the applicant filed the application 20 years after the grant was issued and that he has not given good reasons for the grant to be revoked. He urged the court to dismiss the application.
6. The court took viva voce evidence.
7. PW1 was the applicant who relied on the pleadings and his witness statement. He stated that the 12 parcels of land in dispute have sparked a dispute between 2 clans namely Mbandi represented by Ephantus Njuki Nyaga (deceased) and Mwitia represented by the deceased herein. That the 12 parcels of land belong to the Mbandi clan and that the position was affirmed through land adjudication proceedings no. 384 of 1983. That this position was overturned through an appeal to the Minister who awarded the land to the Mwitia clan. That the Mbandi clan through its representative moved the High Court through judicial review proceedings in JR Application No. 31 of 2004 in which the court quashed the Minister's findings and the land was reinstated to the Mbandi clan. That regardless, the deceased hurriedly transferred the land to himself as representative of the Mwitia clan, knowing very well that the ownership of the land had been given to the Mbandi clan.
8. He stated that it is prudent that the court revokes the grant and order that the land be registered to the applicant as representative of the Mbandi clan for ultimate distribution to its members. On cross-examination he stated that he has the authority of the clan to represent them in these proceedings. That he is not related to the deceased but the petitioner is the son of the deceased. That by the time the petitioner instituted succession proceedings, the parcels were in the name of the deceased and he did not know when the grant was confirmed. That in the JR proceedings, he sued the Attorney General and the decision was delivered in 2005, after which he moved the court for cancellation of the titles but the application was dismissed.
9. DW1 was the petitioner herein who placed reliance on the replying affidavit and his witness statement. He stated that the deceased is his father and at the time of filing succession proceedings, he involved all his family members and thereafter, he distributed the estate accordingly. That by then parcel numbers Mbeere/Kirima/335,1402, 1403, 1404, 1569, 1570, 1571, 1572, 1573, 1574, 1575 and 1576 were registered in the name of the deceased and were not encumbered in any way. That the land has been continuously passed down through several generations and currently, the land is registered in the names of 3 people who are not parties to these proceedings. That the applicant's attempt to have the properties registered to him was dismissed by the court. That the applicant's interest in the land is baseless and it does not make sense that the application was filed 20 years after distribution of the estate of the deceased.



10. On cross-examination, he stated that when he filed succession proceedings, the 12 properties were in the name of the deceased who was survived by 7 siblings. That the deceased also had other properties which were included in the succession proceedings. That the 12 parcels were given to nuclear members of the family and out of which 4 were transferred to purchasers. That his father was registered as proprietor after the proceedings in Land Adjudication Appeal 145 of 1995 and he was aware of the judicial review proceedings and decision when he filed succession proceedings but he did not disclose this fact to the succession court.
11. The issue for determination is whether the grant issued to the petitioner should be revoked.
12. Section 76 of the *Law of Succession Act* provides for circumstances under which a grant of representation may be revoked. It states thus:

“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 or 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 order or allow; 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
- (e) that the grant has become useless and inoperative through subsequent circumstances.”

13. The applicant herein has alleged that the grant was obtained fraudulently by making of a false statement or by concealment from the court of something material to the estate and that the proceedings to obtain the grant were defective in substance. In essence, the main fact concealed is that at the time of petitioning for the grant, the properties in question did not belong to the deceased. Therefore, it is key that the court interrogated the timeline of events in this matter.
14. The parcels of land namely Mbeere/Kirima/335,1402, 1403, 1404, 1569, 1570, 1571, 1572, 1573, 1574, 1575 and 1576 were the subject of Land Adjudication proceedings whose verdict was delivered on 17th October 1990 in favour of the applicant’s father one Ephantus Njuki of Mbandi clan. The deceased appealed against the said decision and through appeal case no. 145 of 1995, the Minister, in a verdict delivered on 10th December 2003, awarded the parcels of land to the deceased, thus overturning



the Tribunal's initial finding. The applicant's father appealed against the decision in appeal case no. 145 of 1995 to the High Court through JR application No. 31 of 2004 the court quashed the decision of the Minister's appeal, thus reverting the land back to the applicant's father. This judgment by the High Court was rendered on 30th May 2005.

15. The petitioner petitioned for a grant of letters of administration in the estate of the deceased through a petition filed on 26th July 1995 through Embu PM Succession Cause no.152 of 1995 and a grant of letters of administration was issued to him on 15th December 1995. On the same day, the petitioner filed summons for confirmation of grant, wherein he proposed distribution of the estate of the deceased in properties other than the 12 named herein. The same was distributed as proposed and the court issued a certificate of confirmation of grant on 15th March 1996.
16. Through summons dated 30th March 2011 the petitioner moved the court seeking rectification of the grant on the basis of Rule 43(1) of the *Probate & Administration Rules*. The gist of the application was to add the 12 properties to the estate and have them distributed to the beneficiaries. In the supporting affidavit to the application, the petitioner deposed that the 12 properties were the subject of a land adjudication process when the deceased died and so they could not be included in the estate at the time.
17. That the properties were registered in the name of the deceased long after his death and so it was necessary to include them as part of his estate at that point in time. He produced official searches dated 14th January 2011 for the 12 parcels of land showing that they were registered in the name of the deceased. The court issued a certificate of confirmation of grant on 11th July 2011 through Embu HC Succession Cause No. 114 of 2011 (formerly Embu PM Succession Cause no.152 of 1995).

Event	Date
Land Adjudication Verdict	17 th October 1990
Grant was issued in the estate of the deceased	15 th December 1995
Certificate of confirmation issued	15 th March 1996
Minister's Appeal verdict	10 th December 2003
Judicial Review judgment	30 th May 2005
Summons for rectification	30 th March 2011
Another certificate of confirmation issued for the 12 properties	11 th July 2011

18. Here is the sequence of events as I understand them:
19. According to this timeline, the 12 parcels of land were still being adjudicated upon by the time the petitioner petitioned for the grant. Adjudication process went as detailed herein and in 2003, the process ended with the applicant's father being awarded the land. As of 10th December 2003, when the Minister awarded the land to the deceased, the grant had already been issued and confirmed in the estate of the deceased. However, the petition did not include the 12 parcels of land which ideally, between



2003-2005 belonged to the deceased before the position was reversed by the high court through judicial review.

20. The petitioner moved the court through an application for rectification of the grant stating that the 12 parcels had been registered in the name of the deceased long after his death and the court distributed the 12 properties. This position is flawed because as of 30th May 2005, the 12 parcels of land did not belong to the deceased or his estate but rather, to the applicant's father and the Mbandi clan.
21. The provisions of section 76 of the Law of Succession Act allow a party to seek revocation of a grant at any point in time. However, in the petition for the grant, the petitioner did not include the 12 properties in contest herein. This means that for as long as those other properties remain uncontested, the grant is safe and it needs not to be revoked.
22. The bigger issue comes in at the point of the summons for rectification of grant which the petitioner used to introduce the 12 properties into the estate of the deceased stating that the same were under adjudication at the time of petitioning for the grant. As I have mentioned earlier, after the court's findings in the judicial review, the property herein was awarded to the applicant's father. That is to say, in 2011 when the petitioner moved the court for inclusion of the properties in the estate, the land did not belong to the deceased.
23. In his testimony as DW1, the petitioner stated that he was aware of the 2005 decision in the judicial review proceedings but proceeded as he did anyway. It seems as though the petitioner's summons for rectification was an afterthought. Either way, the summons is and remains incompetent given the judicial review decision of this court, which remains final. The court was hoodwinked into confirming the grant again in light of the 12 properties. I do note, very importantly, that at some point during the proceedings and with the case numbers evolving into new ones, it was necessary for the case files herein to be retraced and consolidated for consistent flow.
24. Be that as it may, I do however reiterate that there is no basis for revoking the grant since the same was obtained procedurally. However, I take the view that the certificate of confirmation of grant issued on 11th July 2011 was issued in error and it is right that the same should be set aside since it is an order of the court emanating from the said grant. See the case of In re Estate of Prisca Ong'ayo Nande (Deceased) [2020] eKLR.
25. Therefore, I do make the following orders:
 - a. The certificate of confirmation of grant issued on 11th July 2011 is hereby set aside;
 - b. The Land Registrar is hereby ordered to cancel registration of parcel numbers Mbeere/Kirima/335,1402, 1403, 1404, 1569, 1570, 1571, 1572, 1573, 1574, 1575 and 1576 to any parties other than 'Ephantus Njuki Nyaga (deceased) for the Mbandi Clan' pursuant to this court's JR Application Number 31 of 2004 delivered on 30th May 2005;
 - c. There shall be no order as to costs.
26. It is so ordered.

DELIVERED, DATED AND SIGNED AT EMBU THIS 18TH DAY OF SEPTEMBER, 2024.

L. NJUGUNA

JUDGE

.....for the Applicant

.....for the Petitioner

