



REPUBLIC OF KENYA



KENYA LAW
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**in re Estate of Hannah Wanjiru Chege (Deceased) (Civil Appeal
18 of 2019) [2023] KEHC 20787 (KLR) (7 July 2023) (Judgment)**

Neutral citation: [2023] KEHC 20787 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CIVIL APPEAL 18 OF 2019
DO CHEPKWONY, J
JULY 7, 2023**

IN THE MATTER OF THE ESTATE OF HANNAH WANJIRU CHEGE-DECEASED

BETWEEN

PATRICK RIGATHI CHEGE APPELLANT

AND

MARY GATHONI WANGUHU 1ST RESPONDENT

AGATHA WAIRIMU MAINA 2ND RESPONDENT

CECILIA MIRIGO WARUI 3RD RESPONDENT

MARGARET NYANJAU CHEGE 4TH RESPONDENT

(Being an appeal from the Ruling and Order of Honourable J. Kituki, Principal Magistrate delivered on 15th January, 2019 in succession Cause NO.228 of 2007, Kiambu Law Courts)

JUDGMENT

1. This Appeal arose from the Ruling and Order of Honourable J. Kituku, PM delivered on January 15, 2019 in Succession Cause No.228 of 2007 in Kiambu Law Courts.
2. By way of background, and so as to provide context, the trial court issued a ruling on January 10, 2018 wherein it directed the Estate of the Deceased to be distributed equally amongst all the beneficiaries and the court order was issued on February 27, 2018. That while the Administrators were effecting the administration of the said estate, the Respondents filed an application dated 18th June, 2018 and annexed an Amended Certificate of Confirmation of Grant issued on April 4, 2018 which had excluded some of the beneficiaries of the estate.
3. The Appellant then filed the application dated July 27, 2018 seeking the nullification of the Amended Certificate of Confirmation of Grant and reinstatement of the Certificate of Confirmation of Grant



dated 10th January, 2018 and issued on February 27, 2018. The trial court heard this application and on January 16, 2019 dismissed the same with no orders as to costs. It is this Ruling that precipitated the filing of the Appeal herein.

4. The main Grounds of Appeal are that the trial Court erred in law and fact by failing to uphold that:-
 - a. The application dated July 27, 2018 was meritorious.
 - b. That the Certificate of Confirmation of Grant issued on April 4, 2018 was obtained illegally, irregularly and through concealment of material facts and with the inconsistencies therein, the same is therefore prima-facie defective and thus unenforceable.
 - c. That the trial court erred in failing to uphold that the original Certificate of Confirmation of Grant was the lawful, bonafide and valid certificate which ought to be reinstated.
 - d. Further, by failing to appreciate the gravity and legal consequences of the ruling delivered on January 10, 2018 that had confirmed the Grant accordingly.
5. With leave of court, the Appellant filed Supplementary Record of Appeal on February 17, 2023.
6. The Appeal was disposed of by way of written submissions. The Appellant's submission dated January 25, 2023 were filed on January 26, 2023 and the Respondents' submission dated February 14, 2023 were filed on February 17, 2023.
7. The Appellant argues that they were never served with any application for the amendment of the Certificate of Confirmation of Grant and that there is not formal application in the court record on the same. The Appellant contends that the amended grant altered the original Certificate of Confirmation of Grant by adding new and strange beneficiaries to the Estate and removed other rightful beneficiaries.
8. The Appellant argues that the Amended Certificate of Confirmation of Grant is a nullity for reasons that it was allegedly confirmed on April 11, 2018 but the record shows that no grant was confirmed on the said date. It is contended that the grant was issued on 4th April, 2018 yet it was confirmed seven days later, being April 11, 2018m and that the Amended Certificate of Confirmation of Grant does not bear any date for the amendment or endorsement. The Appellant also holds that having two Certificates of Confirmation of Grant confirmed on two different dates is defective and the proper one is the one issued on 10th January, 2022, hence seeks to have the Appeal allowed as prayed.
9. On their part, the Respondents' in the submissions dated 14th February, 2023, confirm that the trial court issued a ruling on the 10th January, 2018 and a Certificate of Confirmation of Grant issued on 27th February, 2018, wherein the court held that the sole property of the estate, being Kiambaa/Thindigua/1830 measuring 1.10 Hectares to be equally distributed among 8 beneficiaries among them being:-
 - a. Paul Gichinga Chege
 - b. Boniface Kariuki Chege
 - c. Patrick Rigathi Chege
 - d. Michael Chege Mwangi



- e. Gabriel Kamau Muhanda
 - f. George Macharia Kamau
 - g. Kariri Mbugua Gichinga
 - h. John Njenga Karori
10. It is the Respondents' position that in the said Certificate of Confirmation of Grant, some beneficiaries being Gabriel Kamau Muhanda, George Macharia Kamau, Kariri Mbugua Gichinga and John Njenga Karori who were strangers in the estate of the deceased. The Respondents contend that when they noted the anomaly, through their advocates, they requested the file to be placed before the court and the matter was fixed for Mention on 28th March, 2018 and a Mention Notice was duly served upon the Appellant's Counsel and an Affidavit of Service filed to that effect.
11. The Respondents go on to state that on 11th April, 2018, the court clarified that the list of beneficiaries was as set out in the Certificate of Confirmation of Grant and the letter from the chief dated 17th September, 2007 and listed the beneficiaries as:-
- a. Paul Gichinga Chege
 - b. Mary Gathoni Wanguhu
 - c. Agatha Wairimu Maina
 - d. Boniface Kariuki Chege
 - e. Cecilia Mirigo Wambui
 - f. Margaret Nyanjau Chege
 - g. Patrick Rigathi Chege.
12. The Respondent argues that the Appellants then filed the application in question dated 27th July, 2018 and held that a formal application for Amendment of Certificate of Confirmation of Grant was not served upon them yet the record shows that when the clarification was made on 11th April, 2018, the Appellants' counsel was present in court. The Respondent admits that the Amended Certificate of Confirmation of Grant had an error as to the date which it was issued but stated that the error could be rectified by court as provided for under section 100 of the Civil Procedure Rules or under section 47 of the [Law of Succession Act](#).
13. The Respondents argue that the error is technical in nature hence does not affect the root of the dispute. They have urged the court to rely on article 159 (2) of [the Constitution](#) of Kenya to administer justice without undue regard to technicalities dismiss the Appeal with costs.

Analysis and Determination

14. This being a first appeal, this Court is guided by the finding in the case of *Selle & Another –vs- Associated Motor Boat Co Ltd & Others* [1968] E.A. 123, where it was held:-

“I accept counsel for the respondent's proposition that this court is not bound necessarily to accept the findings of fact by the court below. An appeal to this court from a trial by the High Court is by way of retrial and the principles upon which this court acts in such an appeal are well settled. Briefly put they are that this court must reconsider the evidence,



evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect. In particular this court is not bound necessarily to follow the trial judge's findings of fact if it appears either that he has clearly failed on some point to take account of particular circumstances or probabilities materially to estimate the evidence or if the impression based on the demeanour of a witness is inconsistent with the evidence in the case generally (Abdul Hameed Saif vs. Ali Mohamed Sholan (1955), 22 E.A.C.A 270) . "

Analysis and Determination

15. In considering the grounds raised for appeal and discussed in the respective submissions by the parties. I have read through the proceedings in the Record of Appeal and find the issues arising for determination being:-
 - a. Which of the two Certificate of Confirmation of Grant was genuine and enforceable;
 - b. Which one should be nullified; and,
 - c. Whether the trial Court erred in the ruling.
16. It is trite that the circumstances under which this court as an appellate court may interfere with a decision of the trial court were clearly set out in the case of *Mbogo -vs- Shah & Another* [1968]EA 93, which held that:-

“I think it is well settled that this court will not interfere

with the exercise of discretion by the inferior court unless it is satisfied that the decision is clearly wrong because it has misdirected itself or because it has acted on matters on which it should not have acted on or because it has failed to take into consideration matters which it should have taken into account and consideration and in doing so arrived at a wrong conclusion and as a result there has been misjustice.”
17. To establish whether or not there was an error, this Court has to look at the court record and of importance are the proceedings of January 10, 2018 when the Original Certificate of Confirmation of Grant was issued and April 11, 2018 when the Amended Certificate of Confirmation of Grant was issued.
18. On January 10, 2018, the Court delivered its Judgment and distributed the estate of the deceased among the beneficiaries equally. On March 7, 2018 the case was fixed for mention on March 28, 2018 and Mention Notice was to issue upon the Petitioner, now, Appellant. On March 28, 2018, in the presence of the Respondent's Counsel, the court held that service was proper. The respondent's Counsel sought a clarification on the eight beneficiaries and the court gave a mention date for April 11, 2018.
19. On April 11, 2018 the court proceeded and issued a clarification on the eight beneficiaries of the estate of the deceased in the presence of Muli for the appellant and in absence of Counsel for the respondent. The court stated the beneficiaries of the estate was as stated in the Certificate of Confirmation of Grant issued on June 29, 2014 and the letter dated September 17, 2007.
20. In determining the application dated July 27, 2018, the trial Court held that the clarification sought on the eight beneficiaries of the estate was not a ground of review or appeal but a request for clarification. The trial Court held that the issue of the date of the Amended Certificate of Confirmation of Grant



was a technical issue which cannot invalidate the document and cited section 72 of the *Interpretation and General Provisions Act*, cap 2 Laws of Kenya. The trial court further held that having identified the eight beneficiaries of the Estate of the deceased, the Amended Certificate of Confirmation of Grant is the proper one as it relates to the court Judgment of January 10, 2018. And on that basis, the trial Court dismissed the application dated July 22, 2018.

21. Having gone through the record, it is this court's opinion that on April 11, 2018, the trial Court only issued the clarification on who were on the list of eight beneficiaries of the estate of the deceased. This court thus agrees with the trial Court that the Certificate of Confirmation of Grant was only clarified on the list of the eight beneficiaries and finds that there was no concealment of facts or irregularities since it was the court that issued the names of the beneficiaries and not the Respondent or any other party.
22. It is therefore the finding of this Court that the trial court did not err in its decision by holding that the lawful and genuine Certificate of Confirmation of Grant was the one issued on April 11, 2018 as it included the list of the eight beneficiaries of the Estate of the Deceased, who are sons and daughters of the Deceased.
23. The issue of the date being in error, the court agrees with the trial Court and the Respondent that it is a technical issue which can be disregarded pursuant to the provisions of article 159 (2) of *the Constitution* of Kenya, 2010.
24. Accordingly, the appeal herein is dismissed with costs to the respondents.
25. It is so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU THIS 7TH DAY OF JULY, 2023.

D. O. CHEPKWONY

JUDGE

In the presence of:

No appearance for and by either party

Court Assistant - Martin

