



REPUBLIC OF KENYA

HIGH COURT OF KENYA AT EMBU

SUCCESSION CAUSE NO. 250 OF 2014

IN THE MATTER OF THE ESTATE OF MUNGAI GICHUGU INOGA

NDUNG’U GICHINGIRI.....APPLICANT

VERSUS

PAUL MUTHEE MWNAGI.....ADMINISTRATOR/RESPONDENT

RULING

1. The applicant herein (Ndungu Gichingiri) has moved this court by way of summons for revocation or annulment of grant dated the 2nd day of May 2019 in which he has sought the following orders: -

- 1) That the grant of representation, and the confirmed grant dated 23rd September, 2014, and 2nd December, 2015 respectively be revoked and/or annulled.*
- 2) That any sale of any portion of land parcel No. 1225 Wachoro Adjudication Section be declared illegal and void ab initio.*
- 3) That costs of this application be borne by the administrator.*

2. The application is premised on the grounds set out on the body of the same and on the facts as deposed to, in the annexed affidavit of NDUNGU GICHINGIRI.

3. The respondent did not file any response to the summons, nor did he attend court when the same came up for hearing. At the hearing, the applicant adopted his witness statement as his evidence in chief and called two witnesses in support of his case, who also adopted their witnesses statements.

4. Going by the said statements and the affidavit in support of the summons, the gist of the applicant’s case is that he is a beneficiary of the estate of the deceased by virtue of being the son to the deceased. According to him, the deceased was survived by the following: -

- 1) Eunice Wairimu Mungai (widow) (deceased)
- 2) Ndungu Gichingiri (son)
- 3) John Mwangi Kurenga (son) (deceased)
- 4) Jane Wanjugu (daughter)

5. That upon his demise, the deceased left behind land parcel No. 1225 Wachoro Adjudication Section forming the whole of his estate.

6. The applicant averred that the respondent (administrator) herein is a grandson to the deceased being a son to his brother John Mwangi Kurenga who is also deceased. He contended that the said respondent proceeded and secretly filed the succession proceedings herein leaving him out and has distributed the estate to himself, his brother and his sister in law, all of who are children of the applicant’s deceased brother.

7. It was his evidence that the grant was obtained through fraud, misrepresentation and non-disclosure of material facts in that the respondent failed to include him as a beneficiary to the estate of the deceased, a fact if disclosed to the court, the court would not have confirmed the grant. It was also his case that the respondent misrepresented material facts by indicating that he is a son of the deceased knowing very well that he is the grandson to the deceased.

8. He thus urged the court to annul the grant as it has the effect of disinheriting him as the surviving son of the deceased which is not in the interest of justice.

9. The sister to the respondent one Mary Muthoni Murira testified in support of the applicant's case. It was her evidence that the deceased to whose estate the proceedings relate was his grandfather by virtue of being a brother to their father, one John Mwangi Kurenga. She confirmed the names of the rightful beneficiaries to the estate of the deceased as per the applicant's evidence on the same and also Land Parcel No. 1225 Wachoro Adjudication Section as the only asset of the deceased estate.

10. It was also her evidence that the respondent secretly filed the succession cause together with his brothers leaving the applicant who is their only surviving uncle. She averred that the chief's letter presented to the court by the respondent misrepresents the position on who the real beneficiaries to the estate of the deceased are, as the persons listed therein are grandsons to the deceased and not his sons.

11. Titus Kamanja Kaniaru the third witness in the matter is a person who has known the applicant and his father since 1965 as they hail from the same village.

12. It was his evidence that the administrator is a grandson to the deceased and not his son as shown in the letter from the assistant chief which the respondent attached to his petition for letters of administration.

13. The court has considered the evidence on record and the grounds in support of the summons for revocation or annulment of the grant filed herein.

14. The powers of the court to revoke or annul a grant are donated by Section 76 of the law of Succession Act Cap 160 of the Laws of Kenya. Under the said section, *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 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

(e) that the grant has become useless and inoperative through subsequent circumstances.

15. The evidence available to the court is that the applicant is the son of the deceased and that the respondent is a grandson of the deceased. This fact is confirmed by PW2, who is a sister to the respondent and by PW3 who has known the family of the deceased since 1965. In the documents filed in court, the respondent who is the petitioner has described himself as the son to the deceased and so are the other beneficiaries listed, although they are all grandchildren of the deceased. The other beneficiary being his late brother John Mwangi Kurenga (deceased). The applicant is not listed in that letter as a son to the deceased.

16. Going by the evidence of the applicant that he is the son of the deceased, it therefore follows that he is a beneficiary to the estate of his father (deceased) and his name ought to have been listed among those of the beneficiaries, if nothing else. The court has perused the list of beneficiaries filed by the respondent and it is clear that the applicant's name is conspicuously missing.

17. As earlier stated, the matter herein proceeded *ex parte* and the only available evidence is that of the applicant and his witnesses. Upon evaluation of the same, I come to the conclusion that the grant was obtained fraudulently and by means of untrue allegation which are among the grounds stated in Section 76 (b) and (c) of the law of Succession Act. In the premises, the summons for revocation or annulment of grant dated 2nd day of May, 2019 is hereby allowed as prayed.

18. Further, any sale of any portion of Land Parcel No. 1225 Wachoro Adjudication Section is/are declared illegal and void *ab initio*.

19. The applicant is awarded the costs of this application.

20. It is so ordered.

Delivered, dated and signed at Embu this 10th day of February, 2021.

L. NJUGUNA

JUDGE

.....for the Applicant

.....for the Respondent