



REPUBLIC OF KENYA

IN THE HIGHCOURT OF KENYA

AT NYAHURURU

SUCCESSION CAUSE NO. 4 OF 2017

(FORMERLY NAKURU SUCCESSION CAUSE NO. 339 OF 2007)

IN THE MATTER OF THE ESTATE OF THE LATE PETER NGORONGO MAKANGA (DECEASED)

JOHN MAKANGA WANGUI.....1ST APPLICANT

RAPHAEL NGORONGO WANGUI.....2ND APPLICANT

STEPHEN KARIUKI WANGUI.....3RD APPLICANT

DAVID WACHIRA WANGUI.....4TH APPLICANT

FRANCIS MWANGI WANGUI.....5TH APPLICANT

VERONICA WANJIKU WANGUI.....6TH APPLICANT

-VS-

HANNAH NJERI NGORONGO.....1ST ADMINISTRATOR/ RESPONDENT

DAVID IRUNGU NGORONGO.....2ND ADMINISTRATOR/ RESPONDENT

JOSEPH MAKANGA NGORONGO.....3RD RESPONDENT

STEPHEN WAGEREKA NGORONGO.....4TH RESPONDENT

PHILIP WACHIRA NGORONGO.....5TH RESPONDENT

SAMUEL MWANGI NGORONGO.....6TH RESPONDENT

RULING

INTRODUCTION

1. The matter before court is an application by the Applicants through summons dated 23/04/2012 seeking to revoke the grant of letters of administration in respect to the estate of Peter Ngorongo Makanga, the deceased herein, jointly made to Hannah Njeri Ngorongo, the 1st Respondent herein, and David Irungu Ngorongo, the 2nd Respondent herein on 11th June 2008 and the certificate of confirmation thereof issued on 11th May 2009. The grounds upon which this application is based are listed as follows:-

I. Spent

II. Spent

III. Spent

IV. That the Grant of Letters of Administration Intestate jointly made to Hannah Njeri Ngorongo and David Irungu Ngorongo on 11th June 2008 and Certificate of Confirmation thereof issued on 11th May 2009 be revoked on grounds that:-

V. The proceedings to obtain the grants were defective in substance.

VI. The grants were obtained fraudulently by making of a false statement or by concealment from the court of material facts that the Applicants were entitled to a share of the deceased's estate.

VII. The grant was obtained by means of an untrue allegation that the Respondents were the only persons entitled to the deceased's estate.

VIII. That the 1st Respondent's registration as the proprietor of LR No. Nyandarua/OI' Joro-Orok West/ 3059, 3060, 3061, 3062, 3063,3064,3065,3066 be cancelled and the estate be redistributed.

IX. That the costs of this application be provided for.

2. Briefly, the backdrop to this case is that the deceased herein died on 19th July 1999 and a grant of letters of administration was made jointly to the 1st and 2nd Respondent on 11th June 2008 and confirmed on 11th May 2009. The Land Parcel No. 520 OI' Joro Orok West Scheme comprised in the estate was inherited by the deceased from the Late Wangui Ngorongo who was the original allottee of the aforementioned parcel of land from the Settlement Fund Trustees.

3. Wangui Ngorongo disappeared without a trace sometime in 1972 but before her disappearance, she had allegedly brought in Magdaline Wangui, the Applicants mother to live in the said parcel of land with her and upon Magdaline's demise in 1992 she buried in the parcel of land. The deceased was also allegedly invited by his father Johana Makanga who was Wangui Ngorongo's son to live in the said parcel of land and after her disappearance without a trace, he was allegedly appointed to hold the piece of land in trust for the rest of the family.

THE APPLICANTS CASE

4. The Applicants' case as contained in the face of the application is that the 1st and 2nd Respondent failed to disclose that the Applicants were in occupation of a portion of the estate in their capacity as grandchildren of the Late Wangui Ngorongo from whom the deceased herein had inherited the estate. The Applicants contend that the 1st and 2nd Respondent failed to disclose that the Applicants were dependants of the deceased's estate and were entitled to a share thereof in equal priority with them.

5. Moreover, the Applicants averred that the 1st and 2nd Respondents concealed that there were previous proceedings relating to the deceased's estate vide Nakuru H.C. Misc. Civil Application No. 150 of 2005 wherein similar grants were issued to the 1st Respondent in Nyahururu P.M.C Succession Cause No. 22 of 2010 were revoked on the same grounds advanced herein.

6. The Applicants asserted that the 1st and 2nd Respondent failed to cite and inform the Applicants about the filing of this cause nor obtain their consent prior to applying for the grant and further, they failed to include the Applicants names as beneficiaries of dependants of the deceased's estate though aware of their interest in the estate.

7. Through the supplementary affidavit dated 25th July 2012 sworn by the 1st Applicant, he averred that he was the great grandchild to the Late Wangui Ngorongo together with his co-Applicants and that he was informed by Wachira Ngorongo, the son of the Late Wangui Ngorongo that the deceased never lived with his mother during her lifetime and that she would only receive visits from members of her immediate family who included the deceased, Wachira Ngorongo and his wife and Johanna Makanga, the latter two who were her sons from time to time.

8. He submitted that the deceased and his wife only moved in after the disappearance of Wangui Ngorongo and that a land succession cause was filed by the settlement officer and it was agreed that the deceased would be registered as allottee of the land as a trustee for the family of Wangui Ngorongo.

9. The 1st Applicant averred that he was informed by Wachira Ngorongo that at no time did Ngorongo Kibe agree to give the land comprising the estate as a gift to the deceased and that the deceased never took care of Wangui Ngorongo at any time. He further averred that the land records were only changed after the disappearance of the latter and the appointment of the deceased as a trustee for the family. He further maintained that the 1st Respondent did not inform them about the loan repayment and that they were ready and willing to pay any amount expended by them in this regard.

10. Moreover, the 1st Applicant asserted that he was born and brought up in the suit property together with his co-Applicants and relied on several pieces of evidence to prove the same i.e. baptism card, headmaster's transfer letter, photograph of his mother's graveyard, thatched house and a semi-permanent house in which he lived in with his siblings standing on the land, his identity card together with those of the 2nd and 3rd Applicants and a chief's letter dated 1st July 2002 confirming the history of the land and their beneficial interest therein on **(pieces of evidence annexed and marked hereto as JMW8 , JMW 9, JMW 10, JMW 11, JMW 12 (a) and (b), JMW 13 (a),(b) and (c) and JMW 14 respectively).**

11. Lastly, he averred that the Applicants have no other place to call home and are truly dependants of the deceased's estate and that the grant issued was obtained fraudulently and that the 1st and 2nd Respondent did not inform them when filing the succession proceedings neither did they include their names as beneficiaries even though they knew their interest thereon.

THE RESPONDENTS CASE

12. The Respondents through their replying affidavit dated 5th June 2012 sworn by the 1st Respondent contended that the deceased was invited to settle in the said parcel of land by his father Johana Makanga and his grandfather Ngorongo Kibe since no one was willing to stay with Wangui Ngorongo his grandmother who was at an advance stage. They averred that the deceased moved into the said parcel of land in 1965 and when the 1st Respondent got married to him in 1968, they settled on the land as a family and have been living there since then.

13. The Respondents asserted that after Wangui Ngorongo disappeared without a trace in 1972 a succession case was filed on or around 1974 in respect to her estate and a consent was recorded to the effect that the suit property be registered in the name of the deceased.

14. The consent was allegedly reached at by Ngorongo Kibe and Makanga Ngorongo, Wangui Ngorongo's husband and son respectively. The Respondents maintained that Ngorongo Kibe, the rightful heir of the land had decided that he would give the said land to the deceased as a gift as he had been the only one willing to take care of his wife and his son agreed with him.

15. The Respondents averred that consequently, the settlement fund trustees indicated that the new loanee was the deceased in place of Wangui Ngorongo and that apart from living on the suit property the deceased began repaying the settlement fund trustees loan which at the time of the deceased's death was still outstanding and the 1st Respondent struggled to clear the loan.

16. The 1st Respondent maintained that if the Applicants were aggrieved by the fact that the property was registered in the name of the deceased they ought to apply to set aside the order of the court in Nyahururu Succession Cause No. 27 of 1974- estate of Wangui Makanga issued on 24/10/1974 and that the said orders did not indicate that the land was to be registered in the deceased name in trust of the Applicants or any other person.

17. Furthermore, the 1st Respondent averred that the Applicants were not dependants of the deceased and have never resided on the suit property and that they have their own pieces of land where they have always resided and are adults who have been fending for themselves and their families independently of the deceased.

18. The 1st Respondent asserted that the Applicants were aware that she intended to apply for grant of letters of administration and that she requested them for financial assistance since she had children in school and that they declined to offer financial assistance but had no objection to her filing of the cause.

19. She pointed out that she had filed another succession cause in relation to the estate in which the grant was annulled on the ground that the court did not have the jurisdiction to deal with the parcel of land and the judge ordered that the application be filed in the high court.

20. In conclusion, the 1st Respondent averred that the deceased died about 13 years ago and the grant was issued more than 6 years ago and that it is not fair that the Applicants should be allowed to annul the grant herein after doing nothing over that period. Moreover, she submitted that the Applicants did not give any reason as to why they did not institute succession or citation proceedings if they have any interest in the subject property and that the application had been brought in utmost bad faith in order to have the deceased's estate wasted.

21. She affirmed that she had applied to transfer the sub-divisions to her children since all the dependants and beneficiaries of the deceased had agreed and there is no dispute. She urged the court to dismiss this application as it is vexatious and frivolous and an abuse of the process of the court.

ANALYSIS

22. The core issue for determination in the instant case is whether the Applicant has established the requirements set out in **Section 76 of the Law of Succession Act** to warrant revocation of the grant issued to the Respondents.

23. **Section 76 of the Law of Succession Act** is very clear that:-

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...

24. The circumstances in which a Grant may be revoked or annulled are set out in Section 76 of the Law of Succession Act as follows:

76. 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—

I. that the proceedings to obtain the Grant were defective in substance;

II. 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;

III. 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;

IV. that the person to whom the Grant was made has failed, after due notice and without reasonable cause either—

a. 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

b. to proceed diligently with the administration of the estate; or

c. 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

V. That the Grant has become useless and inoperative through subsequent circumstances.

25. Furthermore, **Rule 26 of Probate and Administration Rules** states that letters of administration shall not be granted to any Applicant without notice to every person entitled in the same degree as or in priority to the Applicant. In **Re Estate of Wahome Mwenje Ngonoro (2016) eKLR** it was held: -

“It is trite law that if a grant was obtained fraudulently by making of a false statement or by the concealment from the court of something material to the case; or that the grant was obtained by means of untrue allegation of fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently, such a grant can be revoked or annulled. The law permits the court to revoke a grant on its own motion or on application by an interested person.

The evidently deliberate failure by the Respondent to involve the Applicants at the time of filing these proceedings, failing to list them among the beneficiaries or seek their consent or renunciation was in view in bad faith and amounts to concealment of material facts. My conclusion is that the proceedings leading to the issuance of the grant are defective in substance and that material information was not disclosed to the court in that had the court been made aware that there were other beneficiaries who were interested in the deceased's estate, the court would have hesitated to issue the grant.”

26. Without delving into the determination of issues of how the suit property was transferred to the deceased and later the deceased's estate inter alia, I find that the Applicants have beneficial interest in the suit parcel of land as great grandchildren of Wangui Ngorongo, the original alone of the Land Parcel No. 520 Ol' Joro Orok West Scheme.

27. Moreover, they have proven that they were residing in the suit property and that their mother was invited by the original owner to live in the property and is buried thereon as evidenced by pieces of evidence produced in court by the Applicants and marked as **JMW8, JMW 9, JMW 10, JMW 11, JMW 12 (a) and (b), JMW 13 (a),(b) and (c) and JMW 14** and the oral testimony of Wachira Ngorongo, the son of Wangui Ngorongo the original allottee in respect to the suit property which further bolsters their case. The letter dated 1st July 2002 by Peter Gathekia, Gathanje Location Chief indicated that the 1st Respondent had left out all other beneficiaries in filing for succession (**letter marked as exhibit JMW 14**).

28. Furthermore, the Respondents did not adduce any evidence that they had informed the Applicants of their intentions to file for succession as alleged in the replying affidavit dated 5th June 2012. In any case, the 1st Applicant testified in court that after the death of their mother he depended on the deceased together with his siblings and that the deceased had never ordered them to leave the suit parcel of land.

29. The Respondents concealed this information at the time of filing for the grant and for that reason alone the grant is revoked as it was obtained fraudulently by the making of a false statement or by the concealment from the court of something material to the case.

CONCLUSION

30. I find merit in the Applicants' application and therefore thus make the following orders:

(i) The court hereby revokes the grant issued to Hannah Njeri Ngorongo and David Irungu Ngorongo on 11th June 2008 and the certificate of confirmation thereof issued on 11th May 2009.

(ii) That the 1st Respondent's registration as the proprietor of LR No. Nyandarua/Ol' Joro-Orok West/ 3059, 3060, 3061, 3062, 3063,3064,3065,3066 be and is hereby cancelled and the estate to be redistributed afresh.

(iii) The applicants to select one of them to join the 1st and 2nd administrators in getting letters of administration of the instant estate and thereafter file proposals on distribution within 30 days from the date herein and in event of disagreement each side to file separate proposal for court to distribute the estate.

(iv) The parties shall bear their own costs.

DATED, SIGNED AND DELIVERED AT NYAHURURU THIS 13TH DAY OF MAY, 2021.

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CHARLES KARIUKI

JUDGE