



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO 466 OF 2001

IN THE MATTER OF THE ESTATE OF JAMES NJENGA. A. NGANGA (DECEASED)

GRACE NJOKI NJENGAAPPLICANT

RULING

Under consideration is the Chamber Summons dated 30th March, 2021 brought by Grace Njoki Njenga (the Applicant). The Summons seeks the following orders:

1. That this Honorable court be pleased to issue an order revoking **TITLE NO. KABETE/LOWER KABETE/ xxxx** (*herein after known as the suit property*) issued to Damaris Wanjiku Nganga, Holidah Njeri Joel and Hannah Wangari Kago on 12th January, 2001.
2. That this Honourable court be pleased to issue order setting aside the order issued on 7th March, 2001 for stay of any transfer or transaction touching on the **TITLE KNOWN AS KABETE/LOWER KABETE/ xxxx**.
3. That this Honourable court be pleased to issue an order restoring the Register of Titles in respect of **TITLE NO. KABETE/LOWER KABETE/ xxxx** in the name of JAMES NJENGA A. NG'ANG'A (the deceased).
4. That this Honourable court be pleased to issue and order that the transmission be effected in accordance with the Certificate of Confirmation of Grant in Succession Cause No. 466 of 2001 in the matter of estate of JAMES NJENGA A. NG'ANG'A.
5. That costs of this application be in the cause.

The Applicant is the widow of the deceased who died on 11th February 1999. In the Affidavit in support of the Chamber Summons dated 30th April, 2021, the Applicant states that the deceased was the proprietor of **TITLE NO. KABETE/LOWER KABETE/ xxxx**; that upon the death of the deceased Tabitha Wambui Ithiga filed Succession Cause No. 8 of 2000 and was issued with Grant of Letters of Administration on 5th October, 2000. The said Grant was confirmed on 26th October, 2000. Following confirmation, the estate was distributed and transferred to Damaris Wanjiku Nganga (mother of deceased), Hannah Wangari Kago and Holidah Njeri Joel (both sisters of deceased). She also states that a Title Deed was issued in the joint names of the above-named persons.

The Applicant further states that on 7th March, 2001 the court issued orders directing the Land Registrar Kiambu to stay any transfer or transaction touching on the suit property now registered as **KABETE/LOWER KABETE/xxxx/677/2**. She further states that the Grant issued to Tabitha was revoked on 18th September, 2020 and that she and her son Andrew Charles Nganga Njenga were issued with Grant of Letters of Administration intestate in Succession cause 466 of 2001. The Grant was confirmed on 24th November, 2020. She states that she cannot acquire the deceased property by transmission unless the Title issued to Damaris Wanjiku Nganga, Hannah Wangari Kago, Holidah Njeri Joel is revoked, the stay of transfer and transaction set aside and original Title restored to the deceased. She also states that she has been holding the original Title Deed.

Following the directions of this court, this Chamber Summons was canvassed by way of written submissions. The Applicant has filed written submissions dated 10th June 2021. As the Application is unopposed, there are no other Submissions filed. I have read the submissions and I need not repeat the same in this Ruling as they form part of the court record.

I have read the entire court record in respect of this matter. I have noted that following the death of the deceased on 11th February 1999, his mother, Tabitha Wambui Itinga procured a letter from the Chief of Kabete Location that the deceased herein was survived by the following:

1. Tabitha Wambui Itinga - mother
2. Hannah Wangari Kago - sister

3. Holiday Njeri Joel - sister

4. Damaris Wanjiku Ng'ang'a - sister

Tabitha Wambui Itinga petitioned for and was issued with a Grant of Letters of Administration Intestate in respect of this estate on 5th October 2000. The Grant was confirmed on 26th October 2000 after the Administrator filed Chamber Summons dated 12th October 2000 seeking confirmation of the Grant notwithstanding that six months had not expired. Consequent to the confirmation of the Grant, the estate of the deceased comprised in **Land Parcel No. KABETE/LOWER KABETE/xxxx** devolved to Damaris Wanjiku Ng'ang'a, Holiday Njeri Joel and Hanna Wangari Kago jointly.

Tabitha moved the court by way of Notice of Motion brought under Certificate of Urgency dated 9th January, 2001 seeking orders allowing her to effect transmission without original Title Deed as she could not trace it. The orders were issued on the same day, 9th January, 2001, to the effect that Land Registrar Kiambu dispense with the original Title Deed to the suit property and issue a duplicate Title Deed in respect of **KABETE/LOWER KABETE/xxxx** to the Applicant/Administrator. Armed with the duplicate Title Deed, Tabitha effected transmission of the land in issue in the names of Damaris Wanjiku Nganga, Hannah Wangari Kago, Holiday Njeri Joel.

Upon the application by the Applicant the Court issued an order on 6th March 2001 directing the Land Registrar Kiambu to stay any transfer or transaction touching on the title to **KABETE/LOWER KABETE/xxxx** now registered as **KABETE/LOWER KABETE/xxxx-677/2**. On 18th September 2002 the High Court revoked the Grant issued to Tabitha and directed the family to pursue a fresh Grant of Letters of Administration. Subsequently, a new Grant was issued on 24th October 2004 in the names of the Applicant and her son Andrew Charles Ng'ang'a Njenga. The Grant was confirmed on 24th November 2020.

The Applicant has raised three issues for determination:

- (i) **Whether the title issued to Damaris Wanjiku Nganga, Hannah Wangari Kago, Holiday Njeri Joel should be revoked.**
- (ii) **Whether the order for stay of any transfer or transaction touching on the title of the suit property should be set aside.**
- (iii) **Whether the Applicant is entitled to the orders sought.**

On the first issue she has submitted that she and her sons are the rightful heirs to the estate of the deceased. That the Grant issued to Tabitha was revoked in 2001. She has submitted the confirmed grant issued to her on 24th November 2020 cannot be implemented because the suit property is still registered in the names of Damaris Wanjiku Nganga, Hannah Wangari Kago, Holiday Njeri Joel.

On the second issue, the Applicant has submitted that an order staying all transactions touching on the suit property was stayed pursuant to her application dated 2nd March, 2001 which also revoked the Grant issued to Tabitha and a fresh Grant was issued to the Applicant and Andrew Charles Nganga Njenga. She submits that it is fair and just to set aside the order for stay issued herein to enable the administrators to finalize the administration of the estate.

On the third issue she has submitted that she is entitled to the orders sought so that she can effectively administer the deceased estate.

Analysis and Determination

This Application is unopposed. I have considered this matter. The issue of the jurisdiction of this court to grant the orders sought, especially the order to revoke and cancel **Title No. KABETE/LOWER KABETE/xxxx**, should be handled first. I note that counsel for the Applicant has not addressed the issue of jurisdiction. I have considered the issue. I am alive to the provisions of the Land Registration Act, No. 3 of 2012. In Section 80 of this legislation it is provided that:

(1) Subject to subsection (2), the court may order the rectification of the register by directing that any registration be cancelled or amended if it is satisfied that any registration was obtained, made or omitted by fraud or mistake.

(2) The register shall not be rectified to affect the title or a proprietor, unless the proprietor had knowledge of the omission, fraud or mistake in consequence of which the rectification is sought, or caused such omission, fraud or mistake or substantially contributed to it by any act, neglect or default.

My understanding of this provision is that the “**court**” under reference here is the Environment and Land Court established by the Environment and Land Court Act, 2011 and other courts having jurisdiction on matter relating to land. That is the definition of “**court**” found in the Act under reference.

Section 47 of the Law of Succession Act donates powers to this Court to entertain any application and determine any dispute under this Act and to pronounce such decrees and make such orders therein as may be expedient. In addition to this section, Rule 73 of the Probate and Administration Rules clothes this court with powers to make such orders as may be necessary for ends of justice or to prevent abuse of the process of the court. The Rule provides as follows:

Nothing in these Rules shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.

As submitted by the Applicant, the Grant issued to Tabitha Wangui Itinga on 5th October 2000 was revoked by this court on 2nd March 2001. A fresh Grant was issued to the Applicant herein and her son on 26th October 2004. It is clear to me that Grant upon which the transmission of **Title No. KABETE/LOWER KABETE/xxxx** having been revoked by this court, the transmission of the title has no legs to stand on. What Tabitha did, to obtain the Grant through non-disclosure of the Applicant and her sons, who are widow and children of the deceased amounted to intermeddling in the estate of the deceased. Section 45 of the Law of Succession is clear that:

(1) Except so far as expressly authorized by this Act, or by any other written law, or by a grant of representation under this Act, no person shall, for any purpose, take possession or dispose of, or otherwise intermeddle with, any free property of a deceased person.

(2) Any person who contravenes the provisions of this section shall—

(a) be guilty of an offence and liable to a fine not exceeding ten thousand shillings or to a term of imprisonment not exceeding one year or to both such fine and imprisonment; and

(b) be answerable to the rightful executor or administrator, to the extent of the assets with which he has intermeddled after deducting any payments made in the due course of administration.

This Section criminalizes intermeddling. In the case of **Njoki Gicheru Ndiuni vs Dadson Githenji Wahome & 3 others [2016] eKLR** it was held:

“The effect of this is that the property of a dead person cannot be lawfully dealt with by anybody unless such a person is authorized to do so by law. Such authority emanates from a grant of representation, and any such person who handles estate property without authority is guilty of intermeddling. The law takes a very serious view of intermeddling and makes it a criminal offence.”

Although Tabitha was acting on the strength of a Grant issued by a court of competent jurisdiction, the grant was obtained through concealment of material facts, hence its revocation. After revocation of the Grant, Tabitha had no legal basis to continue with the administration of the estate of the deceased in this matter.

I think I have said enough to demonstrate that this Chamber Summons is merited. It is only fair that the Applicant herein be granted the orders prayed for to enable her proceed to finalize the administration of the estate of her deceased husband.

I am persuaded by the case of **Mumbi Mwathi vs Stephen Ndungu Mwathi [2012] eKLR**, where it was held:-

“By reason of what has been stated in number (5) above, upon cancellation of resulting titles, the old Title namely Kiambaa/Muchatua/T 237 shall revert and be restored in the names of the deceased namely Kariuki Kiriso.” In the case of Santuzza Billoti Alias Mei Santuzza (deceased) vs Giacacnio Balasconi [2014] eKLR it was held: “Further, a Succession Court can order a cancellation of a title deed if a deceased’s property is being fraudulently taken away by non-beneficiaries such as where the property is being sold before the grant is confirmed.”

Consequently, I allow the Chamber Summons dated 30th March 2021 in terms of prayers 1, 2, 3, and 4. For avoidance of doubt, I issue the following orders:

1. That **Title No. KABETE/LOWER KABETE/xxxx** issued to Damaris Wanjiku Ng’ang’a, Holiday Njeri Joel and Hannah Wangari Kago on 12th January 2001 is hereby revoked and cancelled.
2. That the order issued on 7th March 2001 for stay of any transfer or transaction touching on **Title No. KABETE/LOWER KABETE/xxxx** hereby set aside.
3. That an order is hereby granted restoring Land Register of **Title No. KABETE/LOWER KABETE/xxxx** in the name of James Njenga A. Ng’ang’a (deceased).
4. That an order is hereby issued that the transmission of **Title No. KABETE/LOWER KABETE/xxxx** shall be effected in accordance with the Certificate of Confirmation of Grant in Succession Cause No. 466 of 2001 in the Matter of the Estate of James Njenga A. Ng’ang’a, deceased.
5. Costs shall be in the cause.

Orders shall issue accordingly.

Dated, signed and delivered this 21st day of July 2021.

S. N. MUTUKU

JUDGE