



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT EMBU**

**CIVIL APPEAL NO. 25 OF 2019**

**JOHN GITARI MUNYI.....APPELLANT**

**VERSUS**

**MARY WAMURANGO JOHN.....RESPONDENT**

**JUDGMENT**

1. The respondent herein filed Succession Cause No. 294 of 2017, in the Senior Principal Magistrate's Court at Runyenjes in respect to the estate of Vincent Karukenya Munyi (deceased). A grant of letters of administration was issued to her on the 13<sup>th</sup> day of October 2017 which was later confirmed on the 21<sup>st</sup> day of December, 2017.

2. On the 22<sup>nd</sup> January, 2018, the appellant herein filed an application for revocation of the said grant which application was based on the following grounds: -

*a) The proceedings to obtain the grant were defective and not accompanied by an affidavit of consent or waiver, of persons entitled to apply.*

*b) That the grant issued in Runyenjes Succession Cause No. 294 of 2017 was obtained fraudulently by making false statements and by concealment from court of facts which were material to the case, which, if disclosed to the court would have led to different orders.*

*c) That the petitioner/respondent herein has dispossessed the legal heir.*

3. The application was heard and in a ruling delivered on the 7<sup>th</sup> day of February 2019, the learned magistrate dismissed the application and stated that the appellant herein has failed to establish any of the grounds for revocation/annulment of the grant as set out in Section 76 of the Law of Succession Act or as expressed on the face of the application dated 24<sup>th</sup> January, 2018.

4. The appellant being dissatisfied with the ruling by the learned magistrate, appealed to this court and has listed eight (8) grounds of appeal in his memorandum of appeal dated 30<sup>th</sup> day of May, 2019.

5. The appeal was disposed off by way of written submissions which both parties filed, and which, this court has duly considered together with the pleadings filed in the trial court.

6. In the documents filed by the respondent in Succession Cause No. 294 of 2017, she has stated that she is the wife of the deceased with whom they had one daughter, namely Joy Grace Gichugu Kamisi, who by then was an adult. The only listed asset owned by the deceased at the time of his death is Embu/Township/494. She annexed a certificate of official search for that parcel of land and a letter from the chief dated 16<sup>th</sup> August 2016 in which she is listed as a beneficiary together with her said daughter Joy Grace Gichugu Kamisi.

7. In the affidavit in support of the summons for revocation or annulment of grant dated the 22<sup>nd</sup> day of January 2018, the appellant herein has deposed that the estate of Vincent Munyi Boni Karukenya is the subject of the High Court Succession Cause No. 151 of 2008 at Embu (formerly Nairobi HC No. 237 of 1992). He further deposes that the respondent herein is not a wife of the deceased and that the letter from the Chief, Ngandori Location, dated 16<sup>th</sup> August, 2016 in the cause filed in the Lower Court was disowned by the location chief. Further that on 13<sup>th</sup> day of October, 2016 the High Court in Embu confirmed the grant in respect of Plot No. Embu/Township/494 (he annexed a copy of the said certificate of confirmation of the grant) and contended that the trial court had no powers to give the same plot to the respondent on the 21<sup>st</sup> December 2017.

8. In response to that application, the respondent averred that her name is noticeably missing on the list of beneficiaries in Form P&A.5 sworn on the 20<sup>th</sup> February, 1992 by Betty Sheila Karukenya, Bonifasio Njeru Karukenya and Victor Alloys Njagi. That the appellant has

not attached to his application a chief's letter introducing him as a beneficiary of the estate and hence he is an imposter.

9. She deposed that in the list of assets in the succession cause filed by the appellant, Plot No. Embu/Township/494 was the only confirmed asset in the estate that has more than seven (7) other assets and thus, the trial court erred by confirming the grant in bits and leaving the other assets out.

10. In his ruling, the learned magistrate found that the estate of Vincent Munyi Karukenya and that of Vincent Karukenya Munyi relate to two different people. Further that, Land parcel Embu/Township/494 was not listed as part of the assets in the Succession Cause No. 151 of 2008 (formerly 237 of 1992 yet it appeared in the certificate of confirmation of the grant.

11. In respect to the allegations of fraud by the appellant, the learned magistrate found that the allegations are grave and criminal in nature and the same were not proved. That the chief ought to have sworn an affidavit for the court to attach weight to the allegation.

12. As to whether the appellant has *locus standi* in the succession cause, the learned magistrate found that he did not disclose his legal interest in the estate of the deceased and neither did he give out names of the other beneficiaries. He found that the allegation of material non-disclosure made by the appellant was unfounded and unsubstantiated. He proceeded to dismiss the application.

13. As already stated, the court has considered the memorandum of appeal and the grounds listed therein and has re-evaluated the evidence on record.

14. From the onset, the court notes that there are two certificates of confirmation of the grant in favour of the appellant and the respondent in respect to the estates of Vincent Munyi Boni Karukenya and that of the estate of Vincent Karukenya Munyi dated 14<sup>th</sup> October 2016 and 21<sup>st</sup> December, 2017 respectively. The evidence available from the documents filed in the respective courts is that the two deceased's died the same day that was; on 15<sup>th</sup> day of August 1991.

15. The letter that the respondent obtained from the chief dated 16/08/2016 is disputed and another letter dated 12/01/2008 is on record that disowns the earlier one from the chief. Though the learned magistrate was of the view that the allegation borders on a criminal offence and to which I concur, I am of the considered view that if that allegation is true, then the genuinity of the certificate of confirmation issued to the respondent would be highly questionable.

16. Still on record, is the affidavit sworn by Betty Sheila Muthanje Karukenya in which she deposes that she is the wife of Vincent Munyi Boni Karukenya Alias Vincent Karukenya Munyi. According to her, the two names refer to one and the same person. She deposes that land reference No. Embu/Municipality /494 had been transferred to Richard Gatumu Jonah Munyi, Bedan Ileri Jonah Munyi, Mathew Jonah Munyi and Esther Njura Jonah Munyi by the deceased before his death only that Municipal Council of Embu had not approved the said transfer. According to her, the plot is not part of the estate of the deceased and therefore not available for distribution. In my respectful view, there is serious doubt as to the identities of the deceased behind the two estates in Succession Cause Nos. 151 of 2008 (formerly 237 of 1992) and 294 of 2017 (Runyenjes).

17. It is also my considered view that the trial court did not have sufficient evidence before it to enable it determine that issue. The merit of this appeal turns on that issue and further, on whether the appellant and the respondent are beneficiaries to the estate of the deceased(s); whether there are other beneficiaries and whether there are other assets belonging to the deceased(s). It is curious that the two deceased died the same day; they hailed from the same area and the land parcel No. Embu/Municipality/494 was owned by both of them and not jointly or in common, at least going by the certificates of confirmation of grant issued to both the appellant and the respondent.

18. As it stands now, there are two certificates of confirmation of grant in respect of the same property but two (2) different beneficiaries who are claiming the land wholly. It goes without saying, that, both of them cannot stand. I note that there is an application for revocation of the grant pending before Embu in Succession Cause No. 229 of 2017 wherein the respondents are challenging the certificate that was issued to the appellant. That application has not been heard. It would not help the parties herein if the two certificates were left to stand.

19. In the premises, I do allow the appeal and revoke the grant issued to the respondent and confirmed on 21<sup>st</sup> December, 2017. Parties to pursue the pending application for revocation of the certificate of the grant issued on the 14<sup>th</sup> October, 2016 and proof their respective claims in that succession cause. The files for the following succession causes be placed together during the hearing of that application.

*i. Civil Appeal Succession Cause No. 25 of 2019 (Embu High Court)*

*ii. Succession Cause No. 294 of 2017 (Runyenjes)*

*iii. Succession Cause No. 229 of 2017 (Chief Magistrate Court Embu)*

*iv. Succession Cause No. 151 of 2008 (High Court Embu) formerly Succession Cause No. 237 of 1992 (Nairobi).*

20. Due to the nature of the appeal herein, each party shall bear its own costs of the appeal.

21. It is so ordered.

**DELIVERED, DATED AND SIGNED AT EMBU THIS 21ST DAY OF JULY, 2021.**

**L. NJUGUNA**

**JUDGE**

.....for the Appellant

.....for the Respondent