



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYAHURURU

P&A NO. 40 OF 2017

IN THE MATTER OF THE ESTATE MUCHERU GITHINJI NGOGO (DECEASED)

PAUL MUNIU KAMAU.....1ST APPLICANT

TERESIA MUTHONI ITORE.....2ND APPLICANT

PETER MUIRURI MUYA.....3RD APPLICANT

ASUNTA NYAMBURA NDUTHA.....4TH APPLICANT

FRANCIS KAMAU THUO.....5TH APPLICANT

STEPHEN NGANGA NGURE.....6TH APPLICANT

-VERSUS-

MURIU MUCHERU.....RESPONDENT

JUDGEMENT

1. The applicants herein filed the summons for revocation of grant of letters of administration dated 2nd September 2016 which they sought revocation of the grant of letters of administration issued to the respondent on 14th July 2016 in respect of the estate of Mucheru Githinji Ndogo (the deceased herein) on the grounds that this court should add their names as buyers of land parcel no. LR Nyandarua/Mkungi/581 (hereinafter referred to as the suit land). The application was also grounded upon the supporting affidavit of Paul Muniu Kamau dated 3rd September 2016.

2. The respondent opposed the application vide the replying affidavit dated 1st November 2016.

3. The matter proceeded by way of viva voce evidence during the application for confirmation.

4. The genesis of this matter began when the deceased and his first wife, Wangari Mucheru, the wife herein bought a piece of land namely Nyandarua/Mkungi/17 measuring approximately 13.5 acres and settled there together with their children. That around 1990 the deceased sold 10 acres from the aforementioned parcel of land and was left with only 3.5 acres. Consequently, in 1994 the deceased was issued with another title deed namely Nyandarua/Mkungi/581. According to the respondent around 1997 the deceased's wife, his mother learnt that the deceased was planning to sell the remaining piece of land and registered a caution dated 17th November 1997 to safeguard her beneficial interest and those of her children.

5. However, the deceased evicted the respondent and his mother from the suit land and demolished the houses therein. He then proceeded to settle in Ndewa Ranch together with his wives where he was buried when he died in 2001. It was his account that they had never returned to the suit land and that other people, unknown to him had been living there. That upon his death the respondent duly petitioned for grant of letters of administration as the deceased's beneficiary in respect to his estate comprising the suit land which was issued on 14th July 2016.

6. According to the applicants the deceased had sold the piece of land to them in 1997. The 1st applicant narrated in court that he met the deceased on 26/4/1997 when he was looking to buy land from Kinangop and was informed that the deceased had land to sell. The 1st applicant went to Mkungi and met the deceased with his wife and he had already subdivided the suit land. That he chose the portion he liked and paid deposit for it which he later completed payment in full.

7. The 1st applicant stated that he asked the deceased about the transfer but the deceased requested him to wait as he wanted to sell the whole portion first. That he indeed sold it to about 6 buyers in total (the applicants herein). That he went back to the deceased to inquire about the transfer process but the deceased said he was unwell and decided to take them to the area chief and they wrote an agreement before the chief and elders dated 12/9/1997 confirming that the deceased was not owed anything. He stated that the deceased then handed over the title deed which he held on behalf of the other applicants. The applicants then proceeded to subdivide the land and pursue individual titles through a surveyor identified in court as Musyoka. Nevertheless, Musyoka was not able to complete the process as when he went to the land registry he found that there had been a caution placed on the land on 17/9/1997 by the deceased's wife.

8. The 1st applicant stated that he asked the deceased about it but he was very unwell at the time and they did not want to bother him and he later died. That they approached his family concerning the suit land and learnt that they had filed a succession cause in Nakuru and that is when they filed their objection hence the present suit.

9. Applicants' Submissions; at the time of drafting the ruling the same had not been availed to court.

RESPONDENT'S SUBMISSIONS:

10. The respondent submitted that the main issues for consideration in the instant application is whether the applicants have presented sufficient grounds to warrant grant of the said orders and whether the honorable court has jurisdiction to hear and determine the subject matter.

11. The respondent averred that the applicants have not proved to court that the grant should be revoked according to **Section 76 of the Law of Succession Act**. That from the land agreements attached by the applicants contradict each other in regard to the land number and ID number of the purported vendor and these illegalities set doubts on the genuineness of both signatures and thumbprints of the purported vendor.

12. It was the respondent's submission that the applicants failed to sufficiently explain why they never obtained any document for subdivision or transfer from 1996 to 2001 when the deceased was still alive. That the applicants forcefully gained entry onto the deceased's estate using local provincial administrators who were reluctant in preserving the deceased's estate as per the law.

13. The applicant asserted that the application before this court seeks to circumvent the principle of *ex turpi causa* and therefore ought to be struck out. Reliance was placed on **Scott V Brown (1892) 2 QB 724**. That the evidence produced by the applicants indicated that the deceased intended to sell to them family property which the mother had already placed a caution on.

14. The respondent outlined the particulars of illegalities, forgery and fraud that were allegedly portrayed by the Applicant's documents and averred that there was evidence of conspiracy amongst the objectors in the manner they violated the law.

15. In addition, the respondent contended that the applicants have not laid any basis to qualify them as beneficiaries of the estate of the deceased. That the subject matter of their interest is determination of sale of land dispute and ownership. The respondent further averred that proper court in his view to handle the present issue is the environment and land court. Reliance was placed on **Article 162 (2) (b) and 165 (5) of the Constitution of Kenya** and **Dr. Leonard Kimeu Mwanthi v Rukaria M'twerandu M'iriungi (2013) eKLR**.

16. In conclusion, the respondent urged this court to dismiss the application with cost and have the grant of letters of administration issued on 14th April 2016 confirmed as per the law.

ANALYSIS AND DETERMINATION:

17. The core issued 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 the grant issued to the Respondent.

18. **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..."

19. 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—

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

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;

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;

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 order or allow; 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

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

20. First and foremost, I take great exception with the drafting of the summons for revocation of the grant. The grounds therein do not meet the scope of circumstances for revoking a grant set out by **Section 76 of the Law of Succession Act**. However, the core duty of this court is to uphold justice at all times and in the interest of the same I understood the applicants summons to purport that the letters of grant of administration issued to the respondent should be revoked and/or annulled because the respondent failed to disclose to court that the suit land belonged to them as they had bought it from the deceased and resided in it only that the deceased had not transferred the land to them.

21. In the instant case, the court shall restrict itself to the determination on revocation which this court has jurisdiction to determine. As the respondent averred in his written submissions, I am fully aware that the Environment and Land Court is constitutionally mandated to determine the validity of the sale between the deceased and the applicants and the agreements thereof but of relevance in this proceedings is that such material facts were never revealed to this court when the grant was being obtained and to enable the court to make an informed decision.

22. The evidence on record suggests that indeed the applicants have beneficial interest in the suit land which is part of the deceased's estate. They submitted that the deceased had sold the suit land to them even though the transfer process was never completed by the time of his demise. It is clear from PW1, PW2 and PW3's testimony that the deceased himself chased away the respondent and his family from the suit land and therefore the respondent's assertion that the applicants had forcefully gained entry into the deceased's estate is untrue. Further, the applicants have been residing in the suit land for over 20 years and have even put up structures. The 1st applicant is even in possession of the suit land original title document which the respondent alleged was burnt when their house caught fire. It is also very telling that the respondent did not include the rest of his father's wives and their families when he filed for succession. Notably, during cross examination by the applicants' advocates the respondent indicated that his father (the deceased) was buried at Ndewa Ranch and not in Mkungu because he had sold the land to the applicants. From the applicants list of documents including the sale agreements; I find that there is cogent evidence to support the fact that the applicants have a beneficial interest in the suit land.

23. In ***Re Estate of Moses Wachira Kimotho (Deceased) Succession Cause 122 of 2002 [2009] eKLR***, the court made pronouncements on the importance of disclosing all material facts before a court of Law while seeking letters of administration and confirmation thereof. It observed;

“I am certain that had the applicants been made aware of the application for the confirmation of grant by being served they would have brought to the fore their aforesaid interest in the estate of the deceased and the resultant grant would have taken care of those interests. Further had the respondent been forthright and candid and included the applicants as beneficiaries of a portion of the estate of the deceased as purchasers for value, the court in confirming the grant would have taken into account their interest in the estate of the deceased. As it is therefore the grant was obtained fraudulently by making of a false statement and or concealment from court of something material to the cause. The respondent knew of the applicants' interest in the estate of the deceased yet she chose to ignore them completely in her petition of letters of administration intestate. She also ignored them completely when she applied for the confirmation of the grant.

24. In the foregoing, and without delving into the determination of issues of how the suit land was transferred to the deceased and later the deceased's estate inter alia, I have no doubt that the Respondent 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.

25. In conclusion, I find that the grant was obtained through fraudulent non-disclosure of material facts on the part of the respondent therefore The court the orders;

i. The order do and is hereby issued to revoke the grant issued to him on 14th July 2016 in respect of the estate of the deceased.

DATED, SIGNED AND DELIVERED AT NYAHURURU THIS 7TH DAY OF OCTOBER, 2021.

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CHARLES KARIUKI

JUDGE