



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KIAMBU

SUCCESSION CAUSE NO. 31 OF 2017

IN THE MATTER OF THE ESTATE OF SAMUEL MBUGUA MAGIRI *alias* KIARIE MAGIRI (DECEASED)

RULING

1. The deceased in this Succession Cause died on 5th April, 1976. This succession matter over the deceased's estate has had a chequered past. A Succession Cause over the deceased's estate, being Kiambu Senior Resident magistrate's Court Succession Case No. 546 of 1996 was filed by *Michael Ngugi Mbugua*. A Grant issued thereof was confirmed 13th February, 1997. That administrator proceeded to subdivide the estate properties, namely KIAMBAA/MUCHATHA/T.387 and KIAMBAA/THIMBIGUA/320. The administrator sold the subdivisions of KIAMBAA/MUCHATHA/T.387.
2. *Justice Rawal* (as she then was) revoked the afore stated Grant on 14th July, 2008 on the ground that the administrator had concealed the other beneficiaries of the estate.
3. On 7th October, 2014 *Justice Musyoka* ordered the Land Registrar of Kiambu County to rectify the register in relation to KIAMBAA/THIMBIGUA/320 by cancelling the subdivisions and restoring the name of the deceased.
4. Justice Musyoka issued a fresh grant on 28th October, 2013 to two administrators, namely, *MICHAEL NGUGUI MBUGUA* and *TERESIA WAMITE MGONGO*. On 7th October, 2014 that Grant was confirmed and the estate was distributed among the beneficiaries.
5. This Court by its Ruling of 5th October, 2018 declined the prayer by the purchasers for the exclusion of KIAMBAA/MUCHATHA/T387, from this Succession Cause pending hearing of Environment and Land Court Suit No. 444 of 2015. This court made a finding that the purchasers could pursue the administrator who sold that property to them.
6. What is before court for determination by this Ruling is an application brought under the provisions of **Section 76** of the **Law of Succession Act Cap 160**. The application is brought by *Catherine Wanjiru Mbugua* and *Peter Kamau Magiri*. Those two applicants are beneficiaries of this estate. They seek the Grant to be revoked on the grounds that the proceedings to obtain and/or confirm the grant were defective in substance; that the Grant was obtained and/or confirmed fraudulently by making false statements and/or the concealment from court of something material to the case; and that the Grant was obtained by means of untrue allegations of facts essential in Law justify the grant and or confirmation. The applicants deponed in their affidavit in support of their application that the consent in their affidavit in support of their application for confirmation of grant was forged; that they did not consent to the mode of distribution of the estate; that they both reside in the United states of America; and that the confirmed Grant should be revoked and all beneficiaries do share equally the estate.
7. The application is opposed by *Michael Mbugua Magiri* who termed applicant's allegations as false and that the applicants and all beneficiaries voluntarily agreed to the mode of distribution.
8. Parties in this matter consented to this matter being considered on the affidavit evidence and written submissions. Although advocates for the administrator stated that she filed written submissions, when I looked in the court file I did not find any such written submissions.

ANALYSIS

9. The summons for revocation fails on several grounds.
10. Firstly, the applicants relied on what seems to be a handwriting expert report signed by *Julius Njiiraini* dated 20th June, 2019. The maker of that report relied on only one allegedly known signature of *Catherine Wanjiru Mbugua* in her affidavit filed in support of the present application. The court would have expected the expert to use known signature signed in an official document, other than on an affidavit in this matter. That reliance renders the report of diminished value.

11. Secondly, the consent which the applicants alleges was forged is heavily stamped by notary public to the extent that the signatures are obliterated. This Court fails to understand how the expert was able to decipher the signature thereof.

12. Although handwriting experts do indeed assist the courts in determining whether the alleged forgery is proved the court has also the duty to examine and satisfy itself whether the handwriting expert opinion can be accepted. This is what was stated in the case **KWANZA ESTATE V. DUBAI BANK LIMITED (2014) eKLR** thus:-

“However I do find that the report in its form cannot be relied upon by this Court because the handwriting expert relied on certain documents in reaching his conclusion, which documents were not attached to the report. The Court has a duty to satisfy itself whether such a report can be accepted, it cannot now do so because of the absence of those documents. I am guided here by the case: ASIRA –Vs- REPUBLIC [1986] KLR 227 as follows:-

‘6. The most an expert on handwriting can properly say is not that somebody definitely wrote a particular thing but that he does not believe a particular writing was by particular person or that the writings are so similar as to be undistinguishable.

It is the duty of a court to make an examination and satisfy itself whether the handwriting expert’s opinion can be accepted and the court cannot blindly accept such an opinion. The failure to demonstrate to the court the features of the so-called disguised handwriting meant that the court did not itself decide the issue.”

13. In my view, the handwriting expert before me does not assist the court to determine that indeed the signature of the applicant *Catherine Wanjiru Mburu* was forged.

14. The application for revocation monumentally fails because the consent which the court relied upon in confirming the Grant was signed by *Catherine Wanjiru Mburu* and *Peter Kamau Magiri* whose signatures were witnessed by a *Notary Public of Montgomery County Maryland, U.S.A.* If indeed those signatures were forged then the ramifications on the notary public whose stamp appears there are very serious. The applicants did not deny appearing before that notary or at all.

15. I am very concerned that this succession has been before the courts for too long. It would also seem that the advocate representing the applicants came on record on 23rd May, 2017. He was on record when the purchasers unsuccessfully sought revocation of the Grant. It was however not until after the Ruling of the purchaser’s application was delivered on 5th October, 2018 that the applicants moved this Court by their present applicant dated 15th June, 2019. Why did the applicants not move simultaneously with the purchasers to revoke the Grant? It would seem that the applicant’s application is an afterthought and it fails to prove any forgery at all.

CONCLUSION

16. In the end, the chamber summons dated 15th June, 2019 is without merit and it is hereby dismissed with costs.

RULING DATED AND DELIVERED AT KIAMBU THIS 7TH DAY OF OCTOBER, 2021.

MARY KASANGO

JUDGE

Coram:

COURT ASSISTANT: NDEGE

FOR CATHERINE MBUGUA & PETER MAGIRI: NO APPEARANCE

FOR MICHAEL N. MBUGUA & TERESA MBONGO: NO APPEARANCE

MR. OMANGI FOR INTERESTED PARTY.

COURT

Ruling delivered virtually.

MARY KASANGO

JUDGE