



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

SUCCESSION CAUSE NO. 684 OF 2013

In the Matter of the Estate of Silas M'Itumwari Mukanagu (Deceased)

GRACE CATHERINE NTINYARI.....1ST OBJECTOR/APPLICANT

LILLIAN KARIMI STEPHEN.....2ND OBJECTOR/APPLICANT

ROSELINE MAKENA MUTWIRI.....3RD OBJECTOR/APPLICANT

MERCY KAIRUTHI KIRIMA.....4TH OBJECTOR/APPLICANT

VERSUS

MURITHI R.M.W STEPHEN.....PETITIONER/RESPONDENT

RULING

1. Silas M'Itumwari Mukanaga (*the deceased herein*) died on 2nd December 2004. Murithi R.M.W. Stephen (*herein also referred to as "the petitioner*), a grandson of the deceased, petitioned for letters of administration on 19/12/2013. He attached a letter of introduction from the area chief of Igoki Location listing Anne Kinya Samson, Murithi R. W. Stephen and Eric Kimathi Kirima as the only beneficiaries of the deceased. He also listed Ntima/Igoki/975 and Ntima/Igoki/6204 as the only assets of the estate of the deceased.

2. The matter was gazetted on 14/2/2014, grant of letters of administration were issued to the petitioner on 19/03/2014. The petitioner filed summons for confirmation of grant on 22/10/2014; the grant was confirmed on 1/12/2014 and later rectified on 19/7/2016.

Application for revocation of grant

3. On 2/04/2019 the objectors filed summons for revocation of the grant issued on 19/7/2016. They also sought a temporary injunction over the assets of the estate. The application was supported by the sworn affidavit of Grace Catherine Ntinyari. She averred that the objectors and the petitioner are sons and daughters of Stephen Kirima (deceased) a son to Silas M'Itumwari who died before the deceased herein. That Anne Kinya Simon is their aunt.

4. They stated further that the petitioner failed: (1) to disclose the full list of beneficiaries of the estate; (2) to seek their consent and/or disclose to them of his intention to take out the letters of administration; (3) to disclose that he was compensated by their national Land Commission after it hived off 0.076 ha from one of the parcels. The objectors decried that the intention of the petitioner was to disinherit them.

5. The petitioner opposed the application vide Replying affidavit dated 27th May 2019. It was his averment that due process was followed in taking out the letters of administration and in these proceedings. He averred that the deceased had bequeathed him and the objectors the land they reside and part of his land was also hived off by the National Land Commission hence the compensation he received did not form part of the estate.

Submissions

6. On 28/5/2019 this Court directed the parties to canvass the appeal through written submissions. Both parties filed their written submissions which I have dully considered. They both reiterated the facts deposed in their affidavits. The objectors on their part relied on the provisions of Section 76 of the Law of Succession Act. The petitioner in part stated two things: (1) that the estate has already been devolved to the intended beneficiaries hence there is nothing to revoke; and (2) that part of the suit premises has already been sold and disposed to 3rd parties hence the court should take cognizance of the provisions of Section 93 of the Law of Succession Act.

ANALYSIS AND DETERMINATION

7. The question to ask is whether the Applicant has established a ground or grounds recognized in law on which the grant herein should be revoked. **Section 76 of the Law of Succession Act** sets out grounds for revocation or annulment of grant 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 -

(a) that the proceedings to obtain the grant were defective in substance;

(b) 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;

(c) 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;

(d) 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 has ordered or allowed; 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

(e) that the grant has become useless and inoperative through subsequent circumstances.

8. From the arguments presented, the applicants have accused the petitioner of, among other things, non-disclosure of material facts and failure to seek their consent as required in applying for letters of administration of the estate of the deceased. Of non-disclosure of material facts; I find a superb expression in the case of **re Estate of Laurent Ntirampeba (Deceased) [2017] eKLR** that;

“On the question of revocation of the grant issued, it is settled law that a person who approaches the Court for grant of relief, equitable or otherwise, is under a solemn obligation to candidly disclose all the material/important facts which have a bearing on the adjudication of the issues raised in the case. A duty is owed to the court to bring out all the facts and refrain from suppressing any material facts. If one is found guilty of concealment of material facts or making an attempt to pollute the pure stream of justice, the court not only has the right, but the duty to deny relief to such person. This was the expression of the court in R. v. Kensington Income Tax Commissioner [1979] 1 KB 486 by Viscount Reading, Chief Justice of the Divisional Court.”

9. Of failure to seek consent of relevant persons, see the case of **Al-Amin Abdulrehman Hatimy v. Mohamed Abdulrehman Mohamed & another [2013] eKLR** where the court held that the Law of Succession by virtue of **Rule 26 of the Probate and Administration Rules** requires that any petition for a Grant of letters of administration must be accompanied by a consent duly signed by all persons entitled in the share in the same estate.

10. From these cases, it is the duty of a litigant to make a full and accurate disclosure of the material facts, and to seek consent required in law in applying for letters of administration of the estate. I will apply this test to the facts of this case. Needless to state that *the established judicial method in resolution of disputes, which rests on the singular dependability of the fact-base, and which vindicates the principles of fairness, objectivity and legitimacy – is to entertain the account from the other side; and thereafter, to weigh, check and balance the two streams of evidence, thereby arriving at a valid and just result.* See dissenting Opinion by Ojwang SCJ in Supreme Court of Kenya, Petition No 1 of 2017. See also emphasis on the centrality of fact in judicial decision-making as was expressed by Andrew Goodman in his learned work, **How Judges Decide Cases: Reading, Writing and Analysing Judgments**, 2nd Indian Reprint (New Delhi: Universal Law Publishing Co. Pvt. Ltd., 2009), in which he observes (p.44):

“However rarefied and abstruse the legal argument before the [Court], it must be anchored on the facts of the case: while the judges will feel free to expound upon the most general principles in order to provide guidance for the future, the actual decision... will turn on the facts, even if the detail of the argument is quite remote from them” [emphases supplied].

11. Emerging from the evidence adduced is that the applicants are daughters of Stephen Kirima, a son to **Silas M’Itumwari** but pre-deceased the deceased herein. The petitioner and Eric Kimathi are also sons of the said Stephen Kirima and brothers to the applicants. In law, the share of a child of the deceased who pre-deceases the deceased devolves upon his children in equal shares regardless of the gender of the child. The court has lamented before about discrimination of women on the basis of gender. And, armed with the Constitution, the court has discharged a ruthless blow upon every incident of bias against women on the basis of gender. I do not see any reason why the petitioner shared out his father’s share of the estate to himself and his brother only at the exclusion of all his sisters. Such action is tainted with poison; prohibited discrimination under article 27 of the Constitution.

12. The record speaks volumes too. Looking at the pleadings, the following matters are clear: (1) The letter of introduction from the Area chief does not include the objectors in the list of dependants or beneficiaries of the deceased. (2) The petitioner did not list the objectors as

dependants or beneficiaries of the estate of the deceased in the petition. (3) To the petition was attached a consent which was only signed by three beneficiaries. (4) These three were the only persons listed in the petition as the beneficiaries of the deceased.

13. In addition, he did not disclose that he received compensation from NLC for part of the land acquired by the state. Such acquisition of the estate property and compensation thereof is an important aspect of the estate and should be disclosed and accounted for. He was under duty as an administrator to disclose the acquisition and compensation as part of administration of the estate. He failed to do so.

14. Against this background and information fathom these. The objectors are granddaughters of the deceased hence in equality with the petitioner in applying for letters of administration. Their consent was therefore necessary. Also, under the principle of representation, as grandchildren of the deceased all are entitled to take the share of their deceased father in equal shares. The petitioner did not disclose fundamental facts in applying for letters of administration. Thus, he is guilty of concealment from the court of something material to the case. He also flouted the law I not seeking for consent from the applicants as required. These matters constitute fatal omission and commission.

15. It is already clear the direction the court is taking. Nonetheless, I find as startling the averment by the petitioner that the estate has devolved to third parties which should be considered under section 93 of the Law of Succession Act. **Section 93 of the law of succession Act** safeguards an innocent purchaser, but, it does not act as a carte blanche of absolute immunity against legitimate challenges to transfer of immovable properties of estate by a personal representative especially those shown to be fraudulent and/or based upon illegalities or fraudulent acts. Such transfer is unlawful and therefore invalid. They do not enjoy protection of the law. To hold otherwise will defeat the whole purpose of inheritance law as well as the objective of the law and the Constitution to protect and preserve the estate property and right of the dependants to inherit the estate property. Such estate properties shall be traced and revert back to the estate. The purchaser of such property is not left without remedy; he has full remedy against the person who unlawfully sold the estate property. See **Re-Estate of Christopher Aide Adela (Deceased) (2009) e KLR** Rawal J (as she was then) where it was held:-

“As per my considered view, Section 93(1) of the Act talks of interest for immovable or movable property and Section 93(2) refers to transfer of immovable property. Obviously both provisions talk of different types of transfer and Section 93(2) protects a purchaser of the immovable property only if he was aware of some liabilities or expenses of the estate which are not met or paid and still got the property transferred in his names. The aspect reading of the said provisions will indicate that the transfer to a purchaser, if shown to be either fraudulent and/or upon other serious defects and/or irregularities can be invalidated. Reading these provisions in the manner will be commensurate with provisions of Section 23 of the Registered Land Act (Cap 281) or any other provisions of law regarding proprietorship of an immovable property. It shall be a very weak or unfair system of law if it gives a carte blanche of absolute immunity against challenges to transfer of immovable properties of estate by a personal representative, it shall be simply against all notions of fairness and justice. No court can encourage such interpretation while a personal representative will be protected even while undertaking unethical or illegal actions prejudicing the interests and rights of right beneficiaries of the estate.”

16. In the upshot, I find that the objectors have established the following: -

(a) The proceedings to obtain the grant were defective in substance; or

(b) 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; or

(c) 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

17. A grant obtained through concealment of material facts or without consent from relevant persons or through false claims is a perfect candidate for revocation. See apt statement in the case of **SAMUEL WAFULA WASIKE vs. HUDSON SIMIYU WAFULA CA NO.161 OF 1993** (Kwach, Omolo and Tunoi JJA) that:-

“A grant obtained on the strength of false claims, without obtaining the consent of persons who had prior right to the grant and on the basis of facts concealed from the court, is liable to revocation.”

18. In light thereof, under section 76 of the law of Succession Act I hereby make the following Orders;

(i) The grant of letters of administration issued to **Murithi R.M.W Stephen** on 19th March 2014 and confirmed on 19th July 2016 be and is hereby revoked.

(ii) An order of inhibition is hereby issued on **L.r. No. Ntima/Igoki/975** and **Ntima/Igoki/6204** pending the hearing and determination of this cause.

(iii) By the powers vested in me under Section 66 of the Law of Succession act I hereby appoint **Grace Catherine Ntinyari** and **Murithi R.M.W Stephen** as joint administrators of the estate. The two administrators shall apply for confirmation of grant within 30 days of today. No orders as to costs.

Dated signed and delivered in open court at Meru this 12th day of 2020

F. GIKONYO

JUDGE

In presence of

M/s Nelima for applicants

Okach and Partners for respondents Murira holding brief.

F. GIKONYO

JUDGE