



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NYERI**

**SUCCESSION CAUSE NO 151 OF 2006**

**IN THE MATTER OF THE ESTATE OF HARUN NYUTHE GITHAIGA (DECEASED)**

**JULIA NJERI NYUTHE.....1<sup>st</sup> APPLICANT**

**OBADIAH MARIKO NYUTHE.....2<sup>nd</sup> APPLICANT**

**-VERSUS-**

**ETHAN MWANGI WAITHAKA.....RESPONDENT**

**RULING**

What is before me is the Summons General dated 7<sup>th</sup> August 2018 by the 1<sup>st</sup> Applicant. She seeks orders that this court be pleased to set aside or vary the ruling of Seron J of 29<sup>th</sup> July 2011, and to uphold the certificate of Confirmation of grant dated 22<sup>nd</sup> January 2010. In addition, that court to issue a temporary injunction directed at the 2<sup>nd</sup> applicant and the respondent herein to stop interfering with the quiet possession and occupation of her share of LR Loc. 14/KIRU/1003 pending the hearing and determination of this suit.

The application is supported by the 1<sup>st</sup> applicant's affidavit sworn on the 7<sup>th</sup> August 2018, and the grounds on the face of the application.

The same is opposed through the respondent's replying affidavit sworn on the 27<sup>th</sup> September 2018, and annexures thereto. The applicant respondent by filing a further affidavit sworn on the 6<sup>th</sup> of November 2018.

Their respective counsel argued the application orally.

Can this court issue the orders sought?

Upon perusing the rival affidavits and considering the submissions on record, the main issue is whether the LR no Loc.14/KIRU/1003 exists? What was the effect of the consent order off 22<sup>nd</sup> February 2008 revoking the grant issued to the 2<sup>nd</sup> applicant on 26<sup>th</sup> January 20106 on any transactions that had been conducted by the administrator before the revocation?

Harun Nyuthe Githiga died on 10<sup>th</sup> June 1981. He was the registered owner of Loc.14/KIRU/1003 and 1236.

Obadiah Marikio nyuthe obtained grant of letters of administration in Muranga RMSC no 146 of 1982 on 27<sup>th</sup> September 1990. A certificate of confirmation of the grant was issued on 28<sup>th</sup> September 1990 whereby the two properties were shared out among other beneficiaries at the exclusion of the applicant.

She filed summons for revocation of that grant in the high court which application was allowed by consent between herself and Obadiah who was the administrator by then. The grant was revoked on the 20<sup>th</sup> February 2008. A fresh grant was issued to both of them on the 27<sup>th</sup> March 2009, and on 27<sup>th</sup> November they filed SCG seeking redistribution of the estate.

A certificate of grant was issued on 22<sup>nd</sup> January 2010 where the 1<sup>st</sup> Applicant would share 1003 equally with another beneficiary while the second applicant would share 1236 equally with another.

What was not disclosed by the administrator is that upon the issuance of the grant in 1990, the transmission had already taken place and Loc. 14/KIRU/1003 was closed and shared among Gladys Wambui Wambugu 3.4 acres. The 2<sup>nd</sup> applicant and his brother Ephantus Nyuthe each

got 1.7 acres producing three new numbers 3081, 3082 and 3083.

The 2<sup>nd</sup> applicant subdivided his 3082 further into 4319-4324, while Ephantus subdivided 3083 into 3170 and 3171. 3171 was registered in the name of the respondent and another in 1991.

Justice Sergon's ruling was on a summons general brought by both the applicants seeking the cancellation of all these subdivisions seeking to revert the same to the original 1003 on the argument that the grant used to carry out all those subdivisions was revoked by the of revocation of 20<sup>th</sup> February 2008, reverting the deceased's estate to the original status for redistribution. The court found that that the respondent's title was protected by s. 93 of the Law of Succession Act and the former administrator could not be heard to now turn round and enter into a consent '*with a view of reversing the gains of the respondent in a matter he fully partook*'. He concluded that the validity of Loc.14/KIRU/3170 was not affected by the revocation of the grant and dismissed the SG.

The 1<sup>st</sup> applicant now wants that order vary varied and /or set aside on the ground that the court revoked the original grant on 20<sup>th</sup> February 2008 and issued a certificate of confirmation of the fresh grant redistributing the deceased's estate on 22<sup>nd</sup> January 2010, then its ruling of 29<sup>th</sup> July 2011 was faulty. That in 2018 Loc. 14/KIRU/1003 registered in the names of the 1<sup>st</sup> applicant and he co beneficiary as per the certificate of 22<sup>nd</sup> January 2010, that in any event the respondent had never proved purchase of the said parcel of land from the 1<sup>st</sup> applicant, that the grant had been revoked on good grounds, non-disclosure on the part of the 2<sup>nd</sup> applicant.

The respondent's argument is that he still holds his title 3071 which has never been cancelled and hence no title no 1003 can be said to be in existence.

I have carefully considered all the arguments.

The 1<sup>st</sup> applicant is the one who has supplied the court with the green cards demonstrating the subdivision of LR 1003, and who got what. She now contends that the respondent should claim his parcel of land from Ephantus Nyuthe and leave her to enjoy her 1003.

Section 93 of the Law of Succession Act states:

***93. Validity of transfer not affected by revocation of representation***

***(1) All transfers of any interest in immovable or movable property made to a purchaser either before or after the commencement of this Act by a person to whom representation has been granted shall be valid, notwithstanding any subsequent revocation or variation of the grant either before or after the commencement of this Act.***

What more need I say. The revocation did not in any way invalidate the respondent's title. It did not cancel any titles. That was the application that the Judge ruled on and dismissed.

The applicant's argument that the revocation was an order in vain is untenable. Her arguments are clear that she is following the wrong person. The revocation did not affect the respondent's title or any other title for that matter that may have been transferred by Obadiah before the revocation. The revocation of the grant did not extinguish the respondent's rights as they were transmitted to him by a person authorised to do so. The issues of purchase e.t.c are between him and the Obadiah. The 1<sup>st</sup> applicant as a beneficiary should pursue her co administrator but not the respondent.

All these other proceedings that she and her co administrator and Ephantus Nyuthe having been trying to pull, including consents to transfer or surrender all the 'subdivisions' of 1003 to her without involving those to whom Obadiah had transferred titles to are what are in vain as they are done without disclosure of what Obadiah had done. They are issues for another forum but cannot form the basis for the variation or setting aside of Judge Sergon's orders.

I must find that the Summons General is misconceived. It is dismissed with costs to the respondent.

**Dated, delivered and signed at Nyeri this 18<sup>th</sup> Day of January 2019.**

**Mumbua T Matheka**

**Judge**

In the presence of:

Ms.Maina for Applicant

Ms.Wangeci holding belief for G.Mwangi for Respondent.

Court Assistant-Emmanuel

**Mumbua T Matheka**

**Judge**

**18/1/19**