



**REPUBLIC OF KENYA**

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

**MISC. SUCCESSION CAUSE NO. 51 OF 2017**

**IN THE MATTER OF THE ESTATE OF THE LATE LOTHAM NJAGI NJAGARA- (DECEASED)**

**JOYC MUTHONI JUSTUS.....ADMINISTRATRIX**

**VERSUS**

**PATRICK JEREMY NYAGA.....APPLICANT**

**R U L I N G**

1. Before me are two applications with one dated 9<sup>th</sup> July, 2018 seeking inter alia revocation of grant issued and confirmed in this cause on 7<sup>th</sup> June, 2018. The other application is dated 10<sup>th</sup> July 2018 and seeks to lift inhibitions registered on the estate (L.R.No. Mwimbi/Murugi/118) in order to facilitate the distribution of the estate as confirmed by this court.

2. The cause relates to the estate of the late Lotham Njagi Njagara (deceased) who died on 27<sup>th</sup> January, 2012 resident at Mutindwa Sub-Location. Joyce Muthoni Justus, was issued with a grant of letters of administration on 31<sup>st</sup> January, 2013 and though the grant was revoked on 5<sup>th</sup> March, 2018, the same Joyce Muthoni Justus was appointed the administratrix of the estate of the deceased on 5<sup>th</sup> March 2018. The administratrix listed the following dependants as having survived the deceased namely:-

- (i) Joyce Muthoni Justus
- (ii) Harriet Ukima Murithi
- (iii) Gatakaa Tirus

3. The only property comprising the estate is listed as Mwimbi/Murugi/118 and the administratrix had proposed that the same be shared almost equally among the three dependants which proposal was adopted by this court on 7<sup>th</sup> June 2017 when it confirmed the grant. The record shows that one Patrick Jeremy Nyaga did prior to the confirmation of grant express intention to file a protest. He was granted a specific time of 14 days within which to file the protest. However by the time the grant was being confirmed the protestor had not filed his protest within the specified time and failed to ask for leave to be allowed to file the protest outside the given time. For the record, he had been given time from 14<sup>th</sup> May, 2018 to file protest, which meant that he was required to file and serve his protest by 28<sup>th</sup> May 2018 which as I have observed above was not done. That is the basis upon which this court disregarded the protest filed belatedly and proceeded to confirm the grant as per the proposed suggest by the administratrix.

4. This court had also looked at the nature of protest filed given the affidavit of protest filed and it is the finding of this court that the same lacked legal basis because, the protestor was not a child of the deceased. He claimed an interest in the estate simply as a reward for having taken care of the deceased and also on the basis of a decision of a tribunal whose jurisdiction to entertain the matter was questionable in the first place, and besides that it is apparent the Land Dispute Tribunal only offered an advisory opinion to the deceased;

***"give Patrick Nyaga one acre of land or more according to his wish."***

So the deceased was not ordered to give out one acre to Patrick Nyaga as such but only told to consider giving him one acre according to his wish. That in my view is how I understood the decision of Land Disputes Tribunal whose mandate and jurisdiction as I have said was questionable. It is also questionable whether a party can legally enforce a decision of a Land Disputes Tribunal through a Succession Cause.

5. In the Summons for Revocation of grant dated 9<sup>th</sup> July, 2018, Patrick Jeremy Nyaga has applied for the revocation/annulment of grant as confirmed on 7<sup>th</sup> June, 2018 on the following grounds namely:-

- (i) That the Objector/Applicant and his family have all their lives lived on Mwimbi/Murugi/118.***

(ii) *That the petitioner filed this cause and proceeded without his knowledge.*

(iii) *That the grant was fraudulently obtained by making of false statement.*

(iv) *That there was concealment of material facts.*

6. In his Supporting Affidavit sworn on 9<sup>th</sup> July, 2018, the applicant states that the deceased was his uncle. He further avers that the deceased had prior to his demise had been sued vide Land Dispute Tribunal Case No.29 of 2010 by his sister Harriet Ukima and that the tribunal made an order that the estate be shared as follows:-

- a) Lotham Njagi Njagara (deceased) - 5 acres
- b) Harriet Ukima Murithi - 4 acres
- c) Nkinga Njagi - 1 acre
- d) Joyce Muthoni - 1 acre
- e) Kaimuri Murugi - 1 acre

7. The applicant has further asserted that the tribunal advised that he be given one acre for taking care of the deceased.

8. The administratrix has opposed the application and has denied that she proceeded in this cause secretly as the applicant actively participated upto the time the grant was confirmed. The respondent has accused the applicant as an imposter who has employed violence as a means of taking the estate by force. The respondent has further averred that the decision of the Land Disputes Tribunal is not enforceable in succession proceedings.

9. At the hearing of the application for revocation herein, the applicant conceded that he was not a party in the Land Dispute Tribunal case and that he had filed another Summons for Revocation of Grant dated 27<sup>th</sup> November, 2017 which was allowed. It also transpired that he had no blood relationship with the deceased given that his name had no relations to either the deceased or any of his relatives. According to him, the deceased welcomed him to his home in 2005 and stayed with him until 2012 when he died.

10. The petitioner on the other hand testified that the applicant is an imposter who is not known by the family of the deceased. She further opined that the applicant should claim land from his own father one Humphrey Murungi if he was a son to him. She accused him for violence which she claimed was being meted on dependants in order to keep them away

11. This court has considered the Summons for Revocation of Grant and the grounds upon which it has been taken. I have also considered the response made by the respondent. It is clear from the evidence tendered before this court that applicant's only ground for his application was the fact of having stayed with the deceased and having found no one at the homestead of the deceased when he was engaged by the deceased to stay with him. He claims that he took care of the deceased and the proceedings from Land Dispute Tribunal appears to reflect but the question posed is whether staying with a deceased person *per se* qualifies one to be considered a dependant within the meaning of **Section 29(b) of the Law of Succession Act**. The answer in my view is in the negative. One must demonstrate to court that the deceased took him as his own child educated him and took care of him prior to his demise but in this instance the care appears to have been vice versa that is the applicant appears to have been taking care of the deceased. It was not clear whether he was taking care of the deceased for gain or as a good Samaritan. There was no evidence tendered by any of the relatives from the deceased family to indicate that the applicant was a nephew or even an adopted child of the deceased.

12. The applicant himself testified that he was a son of the late Humphrey Murungi who died in 1994 but when pushed to state if he had staked claim in the estate of the late Humprey Murungi, he conceded that he had not because he was not recognized either. He indicated further that he was brought up by his mother and did not know who his father was. He further conceded that his name did not reflect the name of Humphrey Murungi and that his name reflected his maternal grandfather. There is no evidence therefore presented before me that suggests that the applicant has any family connection with the deceased.

13. I also find that the Land Disputes Tribunal made a decision to give him one acre of land to be without basis. I have looked at the said decision and I have already observed what is indicated therein. He was not a party in the said proceedings and there was no positive finding that he was entitled to a share of the estate. It is further the finding of the court that the Land Disputes Tribunal lacked jurisdiction in the first place to make an award to a person who was not a party or to give a relief without being moved to grant the relief. A party cannot also enforce a decision made in Land Disputes Tribunal through a Succession Cause as that would amount to an abuse of court process. Such a person needs to go to ELC which is the proper forum to ventilate or execute whatever decisions made by the defunct Land Dispute Tribunal.

14. This court is also not persuaded that respondent concealed material facts or proceeded secretly. As I observed above, the applicant has been in court since 30<sup>th</sup> November, 2017 when his application for revocation of grant was filed. He has been having legal representation throughout and was aware about this cause and what was pending that is why he filed protest to the Summons for Confirmation of Grant dated 3<sup>rd</sup> May, 2018 albeit late.

It is therefore clear that the grounds of concealment as advanced is not well grounded. The proceedings in this cause indicate the contrary.

15. The allegations of fraud on the part of the respondent is also just that. An allegation with no tangible evidence to show that the respondent acted fraudulently in the administration of the estate in this cause.

In conclusion this court finds no merit in the Summons for Revocation of Grant dated 9<sup>th</sup> July, 2018. The same for the reasons aforesaid is dismissed with costs to the respondent.

16. The above decisional finding means that application dated 10<sup>th</sup> July, 2018 by Joyce Muthoni Justus, the administratrix herein stands allowed as prayed since the respondent Patrick Jeremy Nyaga really has no basis given my finding to oppose the same.

I therefore allow the application dated 10<sup>th</sup> July, 2018 but I will make no order as to costs. In order to bring this matter to an end, I direct the OCS Chogoria Police Station to provide security to the administratrix and the District Surveyor to carry out the subdivision and distribute the estate of the deceased in this cause as per the certificate of confirmation dated 11<sup>th</sup> June, 2018.

**Dated, signed and delivered at Chuka this 14<sup>th</sup> day of February, 2019.**

**R.K. LIMO**

**JUDGE**

**14/2/2019**

Ruling dated, signed and delivered in the open court in presence of Mugo holding brief for Murithi for Respondent and Applicant in person.

**R.K. LIMO**

**JUDGE**

**14/2/2019**