



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

SUCCESSION CAUSE NO. 113 OF 2006

In the Matter of the Estate of M'Thuranira M'Rimberia (DECEASED)

FLORENCE KAGUTU MURIUKI.....1ST APPLICANT/OBJECTOR

MARGARET GACORO.....2ND APPLICANT/OBJECTOR

PHILLIP KITHAKA THURANIRA.....3RD APPLICANT/OBJECTOR

DOLINE KAGWIRIA.....4TH APPLICANT/OBJECTOR

NKIROTE KINOTI.....5TH APPLICANT/OBJECTOR

-VS-

JULIUS MBAABU MUKANGU.....1ST RESPONDENT

GILBERT KIRIMI MUGAMBI.....2ND RESPONDENT

TARASILA MAITI M'THURANIRA.....3RD RESPONDENT

MICHAEL KIUGU M'THURANIRA.....4TH RESPONDENT

LILLIAN GAKII.....INTERESTED PARTY

JUDGMENT

[1] I am considering a summons dated 26th January 2019 which is expressed to be brought pursuant to **Section 76 and Rule 44(1) of CAP 160 Laws of Kenya**. The applicant seeks among other orders the revocation or annulment of the amended confirmed grant of letters of administration purported to be issued on 16th August 2016.

[2] It is contended in the application and supporting affidavit of **Florence Kagutu Muriuki** sworn on 24th January 2019 that the grant was obtained fraudulently and included strangers who purport to be purchasers. It was argued further beneficiaries had no right to sell the estate of the deceased without the knowledge or consent of all rightful beneficiaries. In addition, it was the applicant's argument that the court ordered for the affidavits, mutation form and other relevant documents to be supplied to the DCIO for analysis as there was a claim of forgery by the purchasers. But, the DCIO only sent the mutation form to the document examiner and left the other documentation. Therefore the question of forgery still remains unresolved. The Applicants were now apprehensive that the said purchasers are in the process of implementing the said amended grant to the detriment of the rightful beneficiaries who have been left out.

[3] The application was opposed vide the replying affidavit of **Michael Kiugu M'Thuranira** sworn on 19th February 2019. He deposed that the application is a replica of the application dated 10th December 2014 which was determined on 16th August 2016. That the grant confirmed by the court on 9th December 2008 was amended and confirmed on 18th July 2018 and anybody in dispute over the same can only file a case before E & L court for determination. According to the respondents, the DCIO investigated the alleged fraud and made a reporting which the respondents were vindicated. They stated that they were provided for in the consent of the parties herein and the court confirmed the grant in their names and to date no appeal has been filed on it.

Analysis and Determination

[4] I have taken time to peruse the entire record as well as taking due regard of the submissions filed. The issues for determination by the court are;

a. Whether to revoke or annul the amended and confirmed grant of letters of administration issued on 16th August 2016?

b. The place of the interests of Julius Mbaabu Mukangu and Gilbert Kirimi Mugambi in these proceedings?

[5] **Razario Muriuki M'Thuranira** filed petition for letters of administration on 12th April 2006. Grant was confirmed on 9th December 2008 and Certificate issued on 23rd December 2008 distributing the estate; L.P Abogeta/ L-Chure/448 as follows;

a) Michael Kiungu M' Thunariara - 1Acre

b) Tarasila Maiti M' Thuranira- 1Acre (Life Interest to revert to Razaro Muriuki Thunarira upon Death)

c) Julius Mbaabu Mukangu- 1 Acre

d) Gilbert Kirimi Mugambi- 1Acre

[6] Razaro Muriuki M' Thuranira filed application dated 10th December 2014 praying for rectification of the grant confirmed on 9th December 2008 and Prohibitory Orders on the suit premises. On 4th June 2015 Makau J.A delivered a ruling stating that Julius Mbaabu Mukangu and Gilbert Kirimi Mugambi are neither dependants nor creditors to the deceased estate as they are purchasers from Razaro Muriuki therefore strangers to this estate. He advised that they should settle their dispute in another forum but not in this succession cause.

[7] He also held that the rectification of the grant should await the investigation report of the DCIO Meru on the petitioners complaint over the affidavit dated 4th April 2014. Before I delve into the report, I wish to state that the application dated 10th December 2014 prayed for rectification of grant and inhibition on the estate property. It was not for revocation of grant. The one under consideration is for revocation of grant. I need not over emphasis that the two applications are different.

[8] Back to the report. The report indicated that the finger print in the mutation form is identical to that of Razaro Muriuki. This report shows that Razaro signed the mutation forms. His denial of that fact is pure fraud and dishonesty on his part. Nonetheless, this report would most profit proceedings by the purchasers against the estate of Razaro. Makau J advised as much. In these proceedings, the report only settles the big lie by Razaro. Rectification which was to await the report is no longer tenable in light of the application for revocation of grant as well the orders I shall make shortly.

[9] Be that as it may, at the centre of the application before me is the inclusion of strangers come purchasers in the grant as beneficiaries. Makau J made a finding that the two purchasers were neither dependants nor creditors of the estate. Yet, in my ruling of 16th August 2018 I only revoked the grant issued to Razaro for reason of his death and appointed two administrators of the estate. It is not therefore correct to say that the initial grant was not revoked. See what I stated:

That notwithstanding, by the death of the initial administrator, the grant made to him has become useless or inoperative under section 76(e) of the Law of Succession Act; and should be revoked. Accordingly, I revoke the grant made to RAZARO MURIUKI M'THURANIRA. Now, there is absolute legal necessity to appoint an administrator.

[10] The question of distribution was not tackled in that ruling. Rectification which Makau J put in abeyance was really a re-distribution of the estate. I have stated time without number that redistribution of the estate is a fundamental function of the court which cannot be dealt with in the simple and summary procedure provided for rectification of grant small errors in description of property or name or purpose of a limited grant. The squirm herein perhaps led to the belief that the distribution of the estate was retained as was in the grant I revoked. And this has become a major source of misunderstanding and confusion in these proceedings. It is also the basis of the application before me.

[11] Of great importance here is that sale and transfer of the estate property before confirmation of grant is a fundamental legal question; such sale is prohibited by law under section 83 of the Law of Succession Act. It is transaction in the genre of intermeddling with the estate of the deceased. Therefore, it may be inferred that Razaro, Julius Mbaabu and Gilbert Kirimi intermeddled in the estate of the deceased as the sale transaction was done before confirmation of grant. As such, the transactions are unlawful, null and void. These types of transactions in respect of immovable estate property and which have been found to be unlawful, as is the case here; (1) may be punishable by criminal sanction under section 45 of the Law of Succession Act; and (2) do not even enjoy property rights in the Constitution. See article 40(6) of the Constitution which strictly declares that:

(6) The rights under this Article do not extend to any property that has been found to have been unlawfully acquired.

[12] Consequently, the grant is tainted with fraud and illegalities, thus, a perfect candidate for revocation of grant and setting aside of the confirmation thereto under Section 76 of the Law of Succession Act. I will make appropriate orders thereto after what I will state below.

[13] Following the ruling dated 16th August 2016 Michael Kiungu M' Thuranira and Florence Kagutu Muriuki were appointed as joint administrators of the estate. But, as I have stated, confusion set especially when the respondents on 25th July through their advocate applied for rectification of the certificate of confirmation as it reflected different list of beneficiaries and shares from the grant issued on 9th December

2008. I must state that, as courts of law, *we have no right to decline the exercise of jurisdiction on matters that are brought before the court especially where the court finds such an egregious matter which breeds grave injustice to one or more of the parties concerned. The tension created in these proceedings should be resolved in favour of the justice principle.* To eliminate confusion herein, I hereby revoke all previous grants and certificates of confirmation in this file. The court will issue a fresh grant and certificate of confirmation after I have determined distribution herein.

Distribution

[14] Florence Kagutu Muriuki filed summons for Confirmation of grant dated 22nd December 2016 which was amended via a further affidavit filed on 13th March 2017 seeking to distribute the estate of the deceased as follows;

Taracila Maiti M’Thuranira- 1.31 Acres

Florence Kagutu Muriuki- ½ acre

Michael Riungu M’ Thuranira- ½ acre

Phillip Kithaka M’ Thuranira-1/2 acre

Domisiano Kinoti (deceased represented by daughter Nkirote Kinoti)-1/2 acre

Doline Kagwiria -1/2 acre

Margaret Kanyamu- ½ Acre.

[15] This mode of distribution was not challenged. It identifies the rightful beneficiaries of the estate of the deceased. It is also fair and just. Accordingly, I make the following orders:

- a) **All previous grants including the amended grants dated 18th July 2018 are hereby revoked**
- b) **That I make a fresh grant of letters of administration Michael Kiungu M’Thuranira and Florence Kagutu Muriuki. These two had been appointed by the court earlier on in the best interest of all parties.**
- c) **The grant issued in (b) is hereby confirmed. The estate shall be distributed as follows:**

ABOGETA-CHURE/448

- | | |
|---|-------------------|
| 1. Taracila Maiti M’Thuranira- | 1.31 acres |
| 2. Florence Kagutu Muriuki- | ½ acre |
| 3. Michael Riungu M’ Thuranira- | ½ acre |
| 4. Phillip Kithaka M’ Thuranira | ½ acre |
| 5. Domisiano Kinoti (deceased) | |
| represented by daughter Nkirote Kinoti)- | ½ acre |
| 6. DolineKagwiria | - ½ acre |
| 7. Margaret Kanyamu | - ½ acre. |

Dated signed and delivered in open court this 17th July, 2019

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F. GIKONYO

JUDGE

IN PRESENCE OF

Lekona for Soy for objector/applicant

Kimathi for respondents – absent

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F. GIKONYO

JUDGE