



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

CITATION NUMBER 698 OF 2011

IN THE MATTER OF THE ESTATE OF THE LATE IBRAHIM MUGO MAIGUA (DECEASED)

RUTH NJOKI MUGO OBJECTOR/APPLICANT

VERSUS

ANN NJOKI MUGO1ST PETITIONER/RESPONDENT

SAMWEL MWANGI MAIGUA.....2ND PETITIONER/RESPONDENT

RULING

1. This ruling is in respect of the summons for revocation of grant dated 18th January, 2019. The prayers sought are;

1. The grant of representation to the estate of the deceased IBRAHIM MUGO MAIGWA alias IBRAHIM MUGO MAIGUA issued to the Petitioners/Respondents herein on the 16th day of October, 2012 and confirmed on the 3rd October, 2016 be revoked.

2. Spent.

3. The costs of this application be awarded to the objector/applicant.

2. The application is based on grounds that;

1. The Petitioners, have through fraud, illegally procured citation proceedings and supporting documentation, obtained a grant of representation to the estate of the deceased and using the same, vide court order issued at Nakuru on **6th day of June 2018**, through transfer by transmission caused the property of the estate being land parcel no. MITI MINGI/MBARUK BLOCK 8/1052 (KIANJOYA "D") to be transferred to the 1st petitioner/respondent, Samwel Ng'ang'a Mugo and Peninah Njoki Mugo.

2. The objector was never served with the application for citation, or with any other document in respect to the instant succession cause and only came to learn that the grant of representation to the estate of the deceased had been issued to the petitioners herein when persons unknown to the objectors started visiting the real property of the estate with a view to subdividing the same.

3. That the purported beneficiaries as cited by the petitioners/respondents herein are strangers to the objector and the nuclear family of the deceased herein.

4. The proceedings to obtain the grant were therefore defective in substance and the grant itself was obtained by means of untrue allegations of fact essential in point of law to justify the grant.

5. In the circumstances the real beneficiaries of the estate of the deceased have been locked out of sharing in the deceased's estate and the same may be wasted, much to their detriment.

6. It is therefore imperative that orders for the conservation of the property **MITI MINGI/MBARUK BLOCK 8/1052 (KIANJOYA "D")** of the estate be issued by the court during the pendency of these objection proceedings.

7. It shall be in furtherance of Justice to grant the orders sought by this application.

3. The same is further supported by the affidavit of Ruth Njoki Mugo sworn on 18th January, 2019.
4. It is the applicants case that the respondents herein have through fraud illegally procured citation proceedings and subsequently went ahead to obtain a grant of letters of administration in respect of the estate of the deceased herein. Using this grant, the respondents have caused transfer by transmission of land parcel number Miti Mingi/Mbaruk Block 8/1052 Kianjoya "D") to Samwel Ng'ang'a Mugo and Peninah Njoki Mugo.
5. The applicant orders that she is the only widow of the deceased and the deceased was survived by the applicant and five (5) daughters. A chief's letter is annexed to confirm this fact.
6. It is urged that the petition lodged in Court by the respondents was a forgery and the applicant never signed any of the documents used.
7. The applicant avers that she was never served with a citation. The respondents are strangers to the deceased. The letters used by the respondents is from Chief Kabatini Location yet the deceased hailed from Gituamba Sub-Location, Kiamaina Location.
8. The applicants, it is averred, have now used the grant to transmit Land Parcel Number Miti Mingi/Mbaruk Block 8/1052 (Kianjoya "D") to Samwel Ng'ang'a Mugo and Peninah Njoki Mugo.
9. There is no response to the application on record.
10. Of determination is whether the applicant has achieved the necessary legal threshold for the revocation of the grant herein.
11. **Section 76** of the **Law of Succession Act** provides;

"S.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."

12. Does the instant application fall within the ambit of **Section 76**. The mainstay of the application is that the applicant was never served with a citation or with any other document in respect of the succession cause and only came to learn of the issuance of the grant when persons unknown to her started visiting the suit property with a view to sub-dividing the same. She states in her affidavit that the signatures in the documents in support of the application for letters of administration do not belong to her and are forgeries.

13. The applicant's case is that the deceased was only survived by herself and five (5) daughters. Indeed at paragraph 9 of her affidavit she avers that had the children claimed to belong to deceased been his (deceased's) children, they could have been named according to Kikuyu traditions. The names of the said children do not reflect the names of family members of the deceased's family.

14. I have painstakingly considered the application, the supporting grounds and the supporting affidavit.

15. I have had particular regard to the record herein which gives a clear chronological order of the initiation of the petition, the issuance of grant, the confirmation of grant and execution orders.

16. The record tells a completely different story from the narration by the applicant in her application and affidavit in support. One would be forgiven for concluding that the applicant is addressing a different petition other than the one before Court.

17. The record shows a citation was duly served on the applicant and her advocates M/s Chuma Mburu and Company Advocates entered

appearance vide the notice dated 10th February, 2012 and filed in Court the same day.

18. In proceedings before Court (**Hon. Omondi J presiding**), a consent was recorded by the parties (and the applicant was represented by Mr. Nyongesa holding brief for M/s Chuma Mburu and Company Advocates) in which it was agreed that the applicant herein, Anne Njoki Mugo and Maigua Muraguri Maina were to take out letters of administration.

19. The record further shows that a grant of letters of administration was made to the said persons and notably the applicant was one of the appointed administrators.

20. At confirmation stage, the applicant lodged a protest vide her affidavit of protest sworn on 20th June, 2014. Notably in this affidavit, the applicant acknowledges that the deceased was survived by two (2) houses and that Anne Njoki Mugo and Samuel Ng'ang'a Mugo were children of the deceased.

21. That acknowledgement is a complete departure from her current averments in which she asserts that the said persons are strangers to the deceased and that deceased was only survived by herself and five (5) daughters. Her affidavit of protest supports the contention by the chief Kabatini who confirms the existence of two (2) houses. Indeed in that affidavit the applicant herein categorically stated that she had no problem sharing out the property of the deceased equally with his (deceased's) children.

22. The most confounding contradiction between the applicant's current averments and earlier depositions on oath is found in the affidavit in reply to citation by the applicant sworn on 9th February, 2012 where at paragraph 7, she states that she had no means to file the Succession Cause and therefore suggested that Anne Njoki could go ahead and file the Succession Cause and include her and her children. How then can the applicant state that this cause was initiated without her knowledge?

23. The grant herein was confirmed on 3rd October, 2016. A hearing notice had been served on the advocates on record for the applicant as evidenced by the affidavit of service of the hearing notice sworn by Beatrice Njeri Njagua. This affidavit of service shows that the hearing notice dated 5th May, 2016 was duly served.

24. The confirmation of the grant on 3rd October, 2016 was thus within the law and regular.

25. From the above analysis, I have been unable to see any defect in substance or any untrue allegations of fact that could vitiate the grant herein within the meaning of **Section 76** of the **Law of Succession Act**.

26. The grant was issued regularly and on the material before Court the same was confirmed and distribution ordered in the manner shown on the schedule and indeed the applicant benefited in what is discernably fair distribution of the estate of the deceased.

27. For the above stated reasons, the summons for revocation of grant herein must come a cropper. The same lacks in merit and is dismissed. In view of the relationship of the parties, each party is to bear its own costs.

Dated and Delivered at Nakuru this 17th day of July, 2019.

A. K. NDUNG'U

JUDGE