



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
FAMILY DIVISION
SUCCESSION CAUSE NO.2420 OF 2012

IN THE MATTER OF THE ESTATE OF KURIAMUNAGE (DECEASED)

ANDREW NGIGI KURIA.....1ST APPLICANT

WAIRIMU KURIA.....2ND APPLICANT

VERSUS

JOHN KAMAU MUNYAOBJECTOR/RESPONDENT

RULING

1. The Application coming for consideration in this Ruling is the summons for revocation dated 5th October, 2012 supported by the Affidavit of JOHN KAMAU MUNYUA.
2. The Deceased KURIA MUNAGE (Deceased) died intestate on 25th September, 1986 and ANDREW NGIGIKURIA and WAIRIMU KURIA petitioned for Letters of Administration.
3. The grant was issued on 15th February, 2012 to ANDREW NGIGI KURIA and WAIRIMU KURIA.
4. The Parties filed written submissions in the Summons for revocation dated 5.10.2012 which I have duly considered.
5. The Objector submitted that he bought the property KIAMBAA/WAGUTHU/80 with the deceased and since he was out of the Country the land was registered in the deceased's name to hold as a trustee.
6. Further, that the objector has been in possession of half share of the land where he has planted nappier grass and buried two relatives, Joseph Munyua and Jane Ruguru.
7. The Objector now seeks to have the grant issued to the Respondents on 15.2.2012 revoked as the same was obtained fraudulently by concealment from the Court of something material to the case.
8. The Respondents stated in their submissions that the issue of the ownership was not raised when the deceased was alive.
9. Further, that at the time the objector buried his relatives on the land, they had not obtained letters of administration.
10. The Respondents urged the Court to dismiss the summons for revocation and to lift the caution placed on the land by the objector.
11. I have considered the submissions filed by both the objector and the Respondents. I find that it is not in dispute that the submissions filed by the objector buried two relatives on the suit property and that he is in occupation of half portion.
12. The issues this court must determine are as follows:

(i) Whether the grant issued to the Respondents on 15.12.2012 should be revoked.

(ii) Whether this Court has jurisdiction to determine the issue of ownership of the suit property.

(iii) Whether the Caution on the suit property should be listed.

13. On the issue as to whether the grant issued to the Respondents on 15.2.2012 should be revoked, I find that the circumstances under which grants are revoked or annulled are provided for under 76 of the Law of Succession Act which provides as follows:-

Revocation or annulment of grant

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 order or allow; 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.

14. The Objector who has placed a caution on the suit property is claiming that he bought the land with the deceased. He said he is in occupation of half portion of the suit property where he has buried two relatives.

15. I find that the Respondents did not deny that the objector buried his two relatives on the suit property. They said at that time, they had not applied for letters of administration and they wanted to avoid chaos.

16. The Respondents did not tell the objector that they were applying for letters of administration.

17. The Respondents said the objector did not raise the issue of half ownership of the suit property when the deceased was still alive.

18. The deceased died intestate on 25.9.1986 and the Respondents did not apply for letters of Administration until 2012.

19. I find that it is in the interest of justice that the revocation be allowed pending the determination of the issue of ownership of the suit property.

20. . As held in ALEXANDER MBAKA Vs. ROYFORDMURIUKIRAUNI AND 7 OTHERS [2016] eKLR;

“It is only where one has established claim against the estate that has already crystallised that he can litigate it before a Family Court. The claim is to be considered as a liability to the estate. This Court, in my view, cannot be called upon to ascertain whether or not one has a right to an estate of the deceased where such right has not yet crystallised. The right must be shown to have crystallised before the Family Court can entertain it.”

21. To reaffirm the above position, the decision in High Court Succession Cause Number 864 of 1996 [2015] eKLR by *Musyoka J* is apt. In that case the Judge stated;

“Even if there was material establishing that there was such a trust, I doubt that the resolution of this issue would be a matter of the probate court. The mandate of the probate court under the Law of Succession Act is limited. It does not extend to determining issues of ownership of property and declaration of trusts. It is not a matter of the probate court being incompetent to deal with such issues but rather the provisions of the Law of Succession Act and the relevant subsidiary legislation do not provide a convenient mechanism for determination of such issues. A party who wishes to have such matters resolved ought to file a substantive suit to be determined by the Environment and Land Court.

Consequently and for the reasons above stated, I must find and hold that this court has no jurisdiction to resolve the proprietary interest on land based on the alleged trust.

In this case therefore, the only path legally open to the applicants is to institute separate proceedings to articulate their claim/rights in the right forum and which is the Environment and Land Court.”

22. The objector claims that the deceased held the suit property in trust for him and that they purchased the property jointly.

23. The issues of trusts and ownership can only be determined in the Environment and Land Court (ELC) which is established under **Article 162(2) of the Constitution, 2010** which provides that,

“Parliament shall established Courts with the Status of High Court to hear and determine relating to inter-alia the environment and the use and occupation of, and title to, land”

24. This court only deals with Succession cases and it Court does not have the Jurisdiction to determine the issue of trusts or ownership.

25. I accordingly allow the summons for revocation in the following terms:

- (i) THAT the grant issued to the Respondents herein on 15.2.2012 be and is hereby revoked pending determination of ownership in the ELC Court.**
- (ii) THAT the caution registered by the Objector to remain in force until the case in ELC is determined.**
- (iii) THAT either party is at liberty to file suit in the ELC Court.**
- (iv) THAT each party to bear its own costs of this Application.**

DELIVERED, SIGNED AND DATED IN OPEN COURT THIS 20TH DAY OF SEPTEMBER, 2019

ASENATH ONGERI

JUDGE OF THE HIGH COURT OF KENYA, NAIROBI.