



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

SUCCESSION CAUSE NO. 69 OF 1999

(IN THE MATTER OF THE ESTATE OF NDEGWA NGINGA)

JOHN MUNENE MURIUKI.....1ST APPLICANT

DAVID NGARI MURIUKI.....2ND APPLICANT

-VERSUS-

- 1. ALICE WAMBUI NGARI**
- 2. WACHIRA NGARI**
- 3. WAINUKU NGARI**
- 4. DAVID MURIUKI NGARI**
- 5. GATHONI NGARI**
- 6. MERCY NYAWIRA NGARI**
- 7. PERIS WANJIRU NGARI**
- 8. DOUGLAS WANJAU**
- 9. POLLY WAMAITHA**
- 10. GATHIGIA NGARI**
- 11. JANE WAIRIMU WAIGUMI.....RESPONDENTS**

JUDGMENT

Sometimes in 1993, Charles Waigumi Muriuki and Ngari Ndegwa petitioned for grant of letters of administration intestate for administration of the estate of one Ndegwa Nginga (deceased) who is indicated in the affidavit in support of the petition to have died in 1960. The petition appears to have initially been made in the subordinate court but it was later transferred to this Honourable Court. Ngari Ndegwa was one of the two sons and the only surviving child of the deceased while his co-petitioner was the deceased's grandson; he was one of the three sons of Muriuki Ndegwa who was the deceased's other son. Muriuki Ndegwa's other children are named as John Munene Muriuki and David Ngari Muriuki.

The grant was eventually made on 11 September 2001.

By a summons dated 8 March 2002 Ngari Ndegwa sought to have the grant confirmed; he proposed to have the deceased's estate which is made of a parcel of land known as Title No. Iriaini/Chehe/457 measuring approximately 6.9 acres shared between himself and his nephew, Charles Waigumi Muriuki. He proposed to have 4.9 acres while he offered Charles Waigumi Muriuki 2 acres.

On 8 April 2003, Charles Waigumi Muriuki and his brothers John Munene Muriuki and David Ngari Muriuki swore and filed a joint affidavit protesting against the summons for confirmation of grant. They contended that they were laying a claim on the deceased's estate on behalf of their deceased parents who were entitled to half share of the estate.

When the protest came up for hearing on 15 October 2008, the protestors who were acting in person, withdrew their protest when Mr Mugo, the learned counsel for the applicant raised an objection on the ground that the protestors could not purport to act for their parents when they had not obtained letters of the administration to represent them.

In the absence of any protest, the court endorsed Ngari Ndegwa's proposed scheme of distribution and confirmed the grant in the terms he proposed on 15 October 2008. However, Charles Waigumi Muriuki who, as earlier noted, was a joint administrator, declined to execute the transmission documents to give effect to the confirmed grant; in the face of this development, Ndegwa Ngari sought the assistance of the court for transmission of the estate through a summons dated 4 December 2008; in that summons he sought for an order for the deputy registrar's hand in execution of the relevant transmission documents. The application was allowed on 9 March 2009.

What followed was a series of applications for revocation or annulment of grant the first of which was filed as a chamber summons by Charles Waigumi Muriuki; it is undated but was filed in court on 20 April 2009. It is apparent from that summons that he did not have any specific ground or grounds prescribed in section 76 of the Act for revocation or annulment of the grant save to lament that his protest was not heard and that he was not in agreement with the applicant's (in the summons for confirmation of grant) proposed scheme of distribution of the deceased's estate. The applicant opposed the summons and filed replying affidavit in that regard.

Charles Waigumi's brother followed suit and similarly filed a chamber summons dated 18 November 2009 also for revocation or annulment of grant; it was word for word with his brother's summons. Similarly, John Munene Muriuki also filed his summons for revocation of grant; it was dated 5 March 2013 and filed in court on the even date. In this latter summons, John Munene alleged that the proceedings to obtain the grant were defective in substance since he was allegedly 'not served with the hearing notice'. Again, so he contended, the petitioners concealed material facts to the extent that he was not involved in the succession proceedings.

In the final summons for revocation of grant dated 15 September 2017 the same John Munene Muriuki asked for revocation of the grant, this time round on the basis that both the administrators had since died. Upon revocation of the grant, he asked for an order cancelling the titles issued in execution of the confirmed grant and reversion of the estate in to the deceased's name.

Section 76 of the Law of Succession Act under which all these summonses have been made reads as follows:

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.

Apart from the fact of death of the joint administrators, none of the numerous applications by the respective applicants has demonstrated any of the foregoing grounds for the nullification or revocation of the grant made by this honourable court. To begin with, Charles Waigumi Muriuki who triggered the avalanche of these applications, was a joint petitioner together with Ngari Ndegwa for the grant of letters of administration and, as noted, following their petition, the grant was made in their joint names. There is no evidence in his joint petition that the proceedings to obtain the grant were defective; or were fraudulent; or that the grant was obtained by an untrue allegation of fact. Neither has it been demonstrated that he and his co-administrator failed to apply for confirmation of the grant within the statutory period; or they failed to diligently administer the estate; or finally they failed to produce in court an inventory or account of administration.

The rest of the applications suffer from the same deficiencies.

What is more, there is a consent dated 18 February 1993 in which the applicants acknowledged that Charles Waigumi Muriuki and John Munene Muriuki could petition for grant of letters of administration.

Again, the affidavit of protest which the applicants filed in 2003 but later withdrew shows that as early as that year, the applicants had nothing against the grant but that their main bone of contention was the proposed scheme of distribution of the deceased's estate. If they had any reasonable cause to seek for nullification or revocation of the grant, they could and ought to have made application at that time or as soon

as they were aware that the grant had been made.

The only ground available to the applicants for revocation or annulment of the grant is that owing to the death of the joint administrators the grant has become useless and inoperative through subsequent circumstances. But even where the grant is revoked on this ground or on any of the other statutory grounds, it does not follow that the process of succession to the deceased's estate has to commence afresh. Once the grant is revoked and a new administrator or administrators are appointed the administration of the estate proceeds from where the previous administrator or administrators left.

In the present case the administration is as good as complete because it has come from none other than the first applicant himself that following the confirmation of grant the estate was transmitted; as a matter of fact, he exhibited two titles being the sub-division of the original estate, Title No. Iriaini/Chehe/457. The new titles are Title No. Iriani/Chehe/1854 registered in the name of Ngari Ndegwa and Iriani/Chehe/1853 registered in the name of Charles Waigumi Muriuki.

The estate has effectively dissipated and there is nothing left for administration.

For whatever it is worth, I will allow the applicant's application only to the extent that the grant of letters of administration made in the joint names of Ngari Ndegwa and Charles Waigumi Muriuki is hereby revoked; I hereby appoint Wachira Ngari Ndegwa as the administrator in their place. Parties will bear their respective costs. Orders accordingly.

Dated, signed and delivered in open court this 20th day of September 2019

Ngaah Jairus

JUDGE