



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
FAMILY DIVISION
SUCCESSION CAUSE NO. 2813 OF 2012
IN THE MATTER OF THE ESTATE OF BEDAN WAINAINA MUMENYA (DECEASED)

TOM MAINA WAINAINA.....1ST APPLICANT

EUNICE NJERI NJAI.....2ND APPLICANT

MARTHA NJAMBI WAINAINA.....3RD APPLICANT

VERSUS

MARGARET NYAMBURA BEDAN.....RESPONDENT

RULING

The deceased **BEDAN WAINAINA MUMENYA** died intestate on 18th March 1995. He was survived by the following beneficiaries:

- i. Margaret Nyambura - widow (administrator/respondent);
- ii. Tom Maina Wainaina- son; (1st Applicant)
- iii. Eunice Njeri Njai – daughter(2nd applicant);
- iv. Martha Njambi Wainaina –daughter(3rd applicant);
- v. Gladys Mumbi Wainaina –daughter
- vi. Mary Wangui Wainaina- daughter; and
- vii. Loise Kabura Wainaina – son.

A grant of letters of administration intestate was granted to the Respondent on 28th March 2011 and confirmed on 22nd June 2011 by the chief magistrate court at Kiambu in Succession **Cause number 3 of 2011**.

On 20th November 2012, the applicants filed the present application seeking:

- a) that the grant of letters of administration made in Kiambu Chief Magistrate **cause 3 of 2011** on 28th March , 2011 and confirmed on 22nd June 2011 be annulled and or revoked ;
- b) this honourable court issue an injunction order restraining the respondent , her servants agents or any one claiming through her from transferring , alienating, subdividing, or in any other way dealing with the deceased's properties known as **L.R 76/236 (original number 76/32/215) L.R 76/238 (original number 76/23/217) and L.R 76/655 (original number 76/381/272)** pending the hearing and determination of this application ; and

c) costs

The application was based on the grounds that the grant was obtained fraudulently by making false statements and by concealment from the court of something material in that case; that the consent of beneficiaries or persons of equal priority in applying for letters of administration was never obtained; the proceedings were defective and the court lacked jurisdiction.

The application was supported by the affidavit of Martha Njambi Wainaina dated 20th November 2012 and 16th February 2013. It was their case that they were never consulted in the application for letters of administration, the confirmation or mode of distribution. They averred that prior to the deceased's demise he gave the property known as **L.R. 76/655** to the 1st Applicant and **L.R 76/236** and **L.R 76/238** to the daughters and the mother. They averred that the estate to which these proceedings relate was valued at more than kshs. 100,000/= making the said proceedings incurably defective. They further averred that the Respondent/ Administrator secretly sold **L.R. 76/655** and included the interested party as a beneficiary at the expense of leaving some of the siblings out.

The application was opposed by the Respondent, Mary Wangui Wainaina Loise Kabura and interested party through their affidavits dated 1st February 2013 and 25th and 28th November 2013 respectively. It was her case that the grant of letter of administration interstate were issued and confirmed to her without any objection. She averred that the applicants were aware of Kiambu Succession **Cause No. 3 of 2011** and that there was no consent required of a person of equal priority as she was the widow and of higher priority than all other beneficiaries. She stated that she had not disinherited her children having given **L.R 76/238** to the 1st Applicant, **L.R 76/236** to the 3rd Applicant and Loise Kabura and sold **L.R. 76/655** to the interested party. It was her case that she had been sick and needed funds for treatment. It was her case that she had acquired those parcels with her husband thus entitled. She stated that the Applicants resided in the U.S.A and it was not possible to avail them in court however all the beneficiaries that were in Kenya gave their consent and attended court for the confirmation of the grant. Mary Wangui and Loise Kabura reiterated the contents of the Respondent's affidavit and stated that they had consented to the issuance and confirmation of the grant to the Respondent and even attended court to that effect. They further stated that there was no will that gave the 1st Applicant the suit premises and he had been given **L.R 76/238** under the confirmed grant. The interested party case was that the title to the property was already in her name, was in possession of the property, and was not aware of the disagreements between the family members by the time the parcel was transferred to her and that she would suffer great prejudice and inconvenience if the orders sought are granted. They sought for the dismissal of the application with costs.

DETERMINATION

The issues for determination are whether the grant issued on 7th March 2011 and confirmed on 22nd June 2011 should be annulled/revoked; whether the sale of **LR 76/655** made between the Respondent and Kellen Wairimu Ndegwa should be annulled and whether the deceased's estate ought to be redistributed amongst all beneficiaries of the estate.

I have considered submissions by the parties. The Applicants reiterated the contents of their affidavits in that the proceedings to obtain the grant were defective in substance and the grant was obtained fraudulently by making of a false statement or by concealment from court of something material to the case. They submitted that they were neither involved nor did they consent to the Respondent obtaining the grant. They were not invited to participate in the proposed distribution of the estate. It was their submission that the Respondent irregularly sold **L.R 76/655** she disinherited 3 of the deceased lawful beneficiaries, Eunice Njeri Njai, Gladys Mumbi Wainaina and Mary Wangui Wainaina. They submitted that the sale was irregular, unprocedural and contrary to the law vide **Section 37 and section 82(b) (ii) of the Law of Succession Act**. The above provisions provide that no immovable property shall be sold before confirmation of the grant. It was their submissions that the allegations by the Respondent that she needed money for medication were false as the Applicants supported their mother, widow of the deceased. They claimed that they supported and assisted the Respondent with medical care and settled the medical bills. The interested party was included as beneficiary and she was/is a purchaser a fact that was not disclosed to the Court during the confirmation of grant proceedings. The Applicants did not sign the Consent forms. **LR 76/655** was a gift *inter vivos* from the deceased to the 1st Applicant. The Applicants filed Citation against the Respondent in **Succession Cause 1448/2011**. They prayed that the court do revoke the grant and set aside the alleged sale.

The Respondent on the other had submitted that as widow of the deceased, she was administrator, all parties had consented to the issuance of the grant to the Respondent. Her late husband died in 1995 and she and her husband worked hard and purchased the suit properties that comprise of deceased's estate. The Respondent was ailing and suffering ill health and the Applicants did not support her with funds and she also lacked funds to lodge Succession proceedings. So, she sold the suit property to the interested party and that the interested party was a beneficiary and entitled to **L.R 76/655**. She was paid Ksh 12 million wherein she paid medical bills Ksh 1m she bought land and built rental houses and collects Ksh 60,000/- a month. There is ancestral land in Muranga and all properties are in her name available for distribution to her children. It was her submission that she had higher priority than the Applicants in obtaining the letters of administration. She submitted that the grant was issued as per the law. The interested party reiterated the content of her affidavit.

The interested party contended that she bought the suit property and is protected by virtue of **Section 93 of law of Succession Act**.

The circumstances that can lead to the revocation of grant have been set out in **Section 76 of the Law of Succession Act**. For a grant to be revoked either on the Application of an interested party or on the court's own motion there must be evidence that the proceedings to obtain the grant were defective in substance, or the grant was obtained fraudulently by making of false statement, or by concealment of something material to the case, or that the grant was obtained by means of untrue allegations of facts essential in point of law.

A grant may also be revoked if the person named in the grant has failed to apply for confirmation or to proceed diligently with the administration of the estate. See - **Matheka and anor v Matheka (2005) 1KLR pg 456**. It may also be revoked if it can be shown to the Court that the person to whom the grant has been issued has failed to produce to the Court such inventory or account of administration as may be required.

I have carefully analysed the evidence on record, it is not disputed that the respondent did not obtain consent of all the beneficiaries in

applying for letters of administration. The Affidavit in support of the Petition for letters of administration confirms that the Applicants did not sign consents. In this case the applicants. It is also not disputed that the respondent did sell **L.R 76/655** to the interested party before the grant was confirmed on grounds that she was unwell and needed funds for medication contrary to **Section 45** of the **Law of Succession Act** which state that;

“no person shall for any purpose , take possession or dispose of or otherwise intermeddle with any free property of a deceased person”

Upon the perusal of the certificate of confirmation, I note that Eunice Njeri Njai, Gladys Mumbi Wainaina and Mary Wangui Wainaina and most of the beneficiaries of the deceased were not included. Instead the estate was distributed between the Widow of the deceased/Respondent, 1st Applicant, and interested Party who was in fact a Purchaser and not a beneficiary of the deceased’s estate.

It follows that the Respondent is culpable for non-disclosure of material fact; failing to disclose all beneficiaries of deceased’s and the consents contrary to **Rule 26(1) of Probate and Administration Rules**. According to **section 51(2)(g)** of the **Law of Succession Act (Cap 160)** and **Rule 7(1)(e)** of the **Probate and Administration Rules** the process leading to the grant was defective in substance. It is now trite law that where there is such defect and non-disclosure the grant has to be revoked (***In re Estate of Charles Ngotho Gachunga (Deceased) [2015] eKLR***).

Accordingly, the grant obtained on 28th March 2011 and confirmed on 22nd June 2011 in respect to the estate of the deceased is hereby revoked under **Section 76 of Law of Succession Act**.

With regard to revoking the sale of suit property **L.R 76/655** by the widow/administrator of the estate without obtaining the Full grant, confirmation of grant and consents of other beneficiaries. **Section 93 of Law of Succession Act** protects the sale by administrator to the Purchaser as long as the Purchaser is a *bona fide* purchaser for value, she paid Ksh 12 million for the suit property, without notice of the defective title she cannot be faulted as she was not privy to the misdeeds and misinformation by the administrator. Also, this Court takes into account that the transaction took place 9 years ago, the land has been developed. Unless the widow/administrator can/will refund the purchase price in full at once and the value of development and use of land since then, it is impractical and a futile effort to annul the sale of the said property.

The widow of the deceased/administrator of the estate and ALL beneficiaries shall compile the existing properties (including those properties purchased from proceeds of sale of the deceased’s properties) and with participation and consents of ALL beneficiaries redistribute the estate of the deceased.

DELIVERED SIGNED DATED IN OPEN COURT ON 4TH OCTOBER 2019

M.W.MUIGAI

JUDGE

IN THE PRESENCE OF:

N/A FOR 1ST 2ND & 3RD APPLICANT

N/A FOR RESPONDENT

COURT ASSISTANT - JASMINE