



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

SUCCESSION CAUSE NO 213 OF 2007

In the Estate of Murira Kiguaru (Deceased)

WILLIAM MWENDA M'RINGERA.....PETITIONER

Versus

CHARITY MUCHIRI.....OBJECTOR

RULING

Revocation of grant

[1] Before me is a Summons for Revocation of Grant dated 1st August 2019 filed by the Objector. The application is premised upon section 76 of the Law of Succession Act, rule 44 of the Probate and Administration Rules and section 128 of the Registered Land Act. The significant order sought by the Objector is revocation or annulment of the grant made to the Petitioner herein on 8th February 2013.

[2] The objector argued that the petitioner filed this cause secretly without her knowledge and that of her children who have lived on the estate property all their lives. She also averred that her late husband, one Muchiri Mungania sued the deceased in MERU HCCC NO 178 OF 1989 for ownership of LR. NO. NTIMA/IGOKI/638. Except, however after the death of her husband the suit abated and despite her attempts to revive it the court pronounced the suit to have abated. She complained that the petitioner stealthily shared the said property despite the disputed ownership and a restriction that had been placed on the land but which the Objector claims the petitioner also removed fraudulently. She annexed a green card to show the presence of the restriction. According to her, the petitioner concealed these facts from the court. She concluded by stating that it was fair and just to inhibit the land and revoke the grant herein for it is being used to perpetuate fraud on them. She however, admitted that the estate has been distributed but insisted that the distribution was aimed at destroying and taking away of their land. She relied on the case of Films International 1986 3 All. ER 772 in asking the court to take the path that has lower risk of injustice as both parties claim to be in possession of the land.

[3] The Petitioner replied and stated that he was not obligated to inform the Objector of these proceedings for she was not a beneficiary of the estate. He added that the estate has already been distributed to the rightful beneficiaries. Thus, as administration of the estate is complete, nothing is left for distribution. He was clear that LR. NO 638 ceased to exist and so nothing can be founded upon or against such non-existent property. He asked the court to dismiss the application by the Objector. The petitioner argued that the claim by the Objector should be determined by ELC- something she attempted to do in ELC 15 of 2013 (OS) but her application was dismissed. She has exhausted all legal avenues and that is why she has opted to pester the court in these proceedings.

ANALYSIS AND DETERMINATION

[4] This is an application for revocation and or annulment of grant. It is governed by section 76 of the Law of Succession Act which provides as follows: -

76 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.

[5] From the grounds set out in the application, the Supporting Affidavit Sworn on 1st August 2019 as well as the submissions filed by the Objector, the court should examine whether: -

(a) The proceedings to obtain the grant were defective in substance; or

(b) 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; or

(c) 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

[6] I am aware that any interested party may apply for revocation of a grant. However, the basis for applying should be a potent and sound one. I have considered the claim by the Objector. She does not claim to be a dependant of the estate of the deceased. Her claim is a proprietary one; that her late husband owns the suit property. Such disputes cannot be tried in a probate jurisdiction; they fall within the exclusive jurisdiction of Environment and Land Court (ELC). I see that the initial suit by the late husband of the Objector abated. The other one brought by way of OS No. 15 of 2013 was also dismissed. I should also state that being in actual possession of the estate property may not in itself confer a right in the estate property. Holding otherwise will give justification to trespassers, strangers and intermeddlers in the estate property to stake a claim of entitlement in the estate on the basis of their wrongdoing. In this case, there is no declaration of proprietary rights- possessory or otherwise- which has been made by a court of competent jurisdiction in her favour. In saying this, I am not without sympathy for the Objector especially because all her efforts did not yield a declaration of ownership of the property in favour of the estate of her late husband. In addition, the estate has been completely administered and shared out to the rightful beneficiaries. Disruption of the distribution of the estate herein upon undefined or unascertained interest is a dangerous path that carries higher risk of injustice. Accordingly, the circumstances of this case points to one conclusion; that the Objector's application lacks a foot on which to stand.

[7] In the upshot, albeit with extreme trepidation, the facts of this case calls for dismissal of the application. I dismiss the application for revocation. I however make no order as to costs.

Dated, signed and delivered at Meru in open court this 19th

day of November, 2019

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F. GIKONYO

JUDGE

IN PRESENCE OF

Petitioner – present

Kimathi for petitioner H. GITONGA holding brief

Otieno C for objector – absent

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F. GIKONYO

JUDGE