



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERUGOYA

SUCCESSION CAUSE NO.63 OF 2013

(FORMERLY EMBU HIGH COURT SUCCESSION CAUSE NO.144 OF 2011)

IN THE MATTER OF THE ESTATE OF MURIUKI KAGO.....DECEASED

DANIEL NGARI MURIUKI.....APPLICANT

VERSUS

JACKSON NJERU MURIUKI.....RESPONDENT

RULING

1. This matter relates to the estate of MURIUKI KAGO [deceased]. A grant of Letters of Administration was issued to Jackson Njeru Muriuki on 10.12.2004 and confirmed on 12.2.2009. The estate of the deceased comprised in Land parcel No.BARAGWI/GUAMA/671 was given to the Petitioner Jackson Njeru Muriuki. This was in succession cause NO.175/2003 in the Magistrate's court Kerugoya.

2. The applicant Danniell Ngari Muriuki who is a brother to the respondent and a son of the deceased filed a summons for revocation of grant claiming that the grant was obtained fraudulently by making of false statement or by concealment form Court something material to the case that the estate was supposed to be shared amongst the deceased's wife and all the children but not one of them and the court was not informed that he was one of the beneficiaries and he was in prison when grant was confirmed.

The respondent Jackson Njeru Muriuki filed a replying affidavit and admits the applicant is his younger brother. The cause was filed by their mother Agnes Kamori Muriuki but upon her death he substituted her.

3. The grant was issued under the name Samuel Gakono Ngari. He filed an application for citation and the same was done. Ndambiri Muriuki and Daniel Ngari Muriuki (applicant) were to get 1.45 acres each and they exchanged their land with parcel No.NGARIAMA/THIRIKWA/759 which is in the name of Samuel Gakono.

Samuel Gakono started utilizing the land and became the administrator.

The respondent applied for rectification of grant.

4. The respondent contends that the applicant was aware of the succession cause. The applicant and Ndambiri sold land which they had obtained through exchange. The Samuel Gakono filed a case before the Land Disputes Tribunal. He submits that the grant was not obtained fraudulently. He has not refused to transfer the land to the applicant but there is a Judicial Review case in the Environment and Land Court which he filed after the land disputes Tribunal ordered him to transfer land to Samuel Gakono Ngari without giving him a chance to be heard.

5. He is unable to transfer to the applicant due to the order of the Tribunal.

6. Ndambiri Muriuki stated that they authorized the respondent to have the grant rectified and the title issued in his name and he would late give him and the applicant 1.145 acres each. The respondent has not refused to transfer.

7. In his submissions the applicant states that the respondent did not disclose in the lower court that his brothers were entitled to the estate of the deceased.

That there was failure to disclose a material fact and that is recognized by ***Section 72 of the Law Succession Act*** as a ground upon which the grant may be challenged.

8. For the respondent it is submitted that the summons is competent as the applicant was aware that the respondent substituted their mother by consent and the applicant cannot allege fraud. That the estate was not distributed.

9. That the application lacks merits as the facts are not in dispute and he is willing to transfer the share to the applicant once the Judicial review is heard and determined.

10. I have considered all the evidence adduced. The facts of the case are not in dispute. The deceased was survived by his wife who filed succession but she died before the cause could be finalized. The deceased was also survived by;

1. Jackson Njeru Muriuki - son
2. Ndambiri Muriuki - son
3. Daniel Ngari Muriuki - son

Under Section 29 of the Law of succession Act the three who were children of the deceased are beneficiaries and dependants entitled to benefit from the estate. Being children they are entitled to equal shares.

Section 29 (a) Provides;

(a) the wife or wives, or former wife or wives, and the children of the deceased whether or not maintained by the deceased immediately prior to his death.

11. The respondent depones that the applicant and Ndambiri Muriuki were entitled to get 1.145 acres each. The grant gives the respondent a whole share. The respondent depones that there was a consent that he be registered in trust. It is trite that he who alleges must prove. This is known as the burden of prove. **Section 107 of the Evidence Act Cap. 8 provides;**

Burden of proof

(1) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.

(2) When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.

The respondent has not provided prove that he was to be registered in trust. Though a trust in registered land need not be registered, this court has no jurisdiction to deal with issues of trust as that is the preserve of the Land and Environment Court. What is before this court is the matter of the estate of the deceased and is governed by the **Law of Succession Act as provided under Section 2 (1).**

Application of Act

(1) Except as otherwise expressly provided in this Act or any other written law, the provisions of this Act shall constitute the law of Kenya in respect of, and shall have universal application to, all cases of intestate or testamentary succession to the estates of deceased persons dying after the commencement of this Act and to the administration of estates of those persons.

The respondent has not tendered evidence to show that he had disclosed that the applicant and Ndambiri Muriuki were beneficiaries entitled to the estate of the deceased. The fact that the applicant was a beneficiary entitled to the estate was a material fact which had to be disclosed to the court. None disclosure of material facts to court is a ground upon which the court can order revocation of the grant not section 76 withstanding that the omission was made in ignorance or inadvertently. **Section 76 (a) (b) & (c) provides;**

(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;

12. These are the grounds upon which the court will revoke the grant. The grounds include, proceedings were defective in substance, the grant was obtained fraudulently by making of a false statement or concealing from court something material. It will also be revoked if the grant was obtained by means of untrue allegations of fact essential in point of law to justify the grant not understanding that it was made in ignorance or inadvertently. The grant will also be revoked if the person to whom it was issued fails to apply for confirmation, to proceed diligently with the administration fails to produce an inventory or account of administration within the prescribed time or where the grant has become useless and inoperative through subsequent circumstances.

13. A party seeking revocation of the grant need not prove all the above grounds, the court will revoke the grant on the strength of prove of any of the above grounds.

14. There is no dispute that the applicant is a son of the deceased. The certificate of confirmation of grant shows that the entire estate of the deceased, that is Land parcel No.BARAGWI/GUAMA/671 was inherited by Jackson Njeru Muriuki the respondent. There is nothing on record to show that the applicant had waived his right to get a share of the estate of his deceased father. The applicant depones that during the filing of the succession Cause No.175/2003 at Kerugoya Court, they had agreed that the land parcel No.BARAGWE/GUAMA/671 was

to be shared equally between the wife of the deceased and his surviving children but he was surprised to find that it was only given to the respondent alone contrary to what was agreed. The respondent has deponed that the grant was in the name of Samuel Gakono but he applied for rectification. He was not shown how the grant was issued to Samuel Gakono and yet he (respondent) was the administrator nor has he annexed that grant. He depones that he was registered since the applicant and Ndambiri Muriuki exchanged land with Samuel Gakono. The respondent has annexed a letter showing that the name Samule Gakono was made in error and there was an investigations which resulted in a person being charged. These are facts which show that the succession was not done above board. The alleged grant issued to Gakono was not annexed. The only grant annexed is the one showing the respondent got the land exclusively. The averments in the replying affidavit are not substantiated. I find that the respondent admitted he substituted his mother who had filed the succession. He was the administrator and ought to have included his brother as beneficiaries which he did not.

15. I find that the applicant has proved that respondent obtained the grant fraudulently by concealing from court something material to the case. Failure to disclose to the court that there were other beneficiaries is fraudulent and contrary to the provisions of the Law of Succession Act which requires that the estate of a deceased person be shared equally among all the beneficiaries who are entitled to the state. I find that the applicant and Ndambiri Muriuki are the sons of the deceased and therefore dependants who are entitled to benefit from his estate. The respondent has deponed on oath that they were entitled to get 1.45 acres out of the estate of the deceased but got nothing and yet he went on to obtain a grant which gave him the whole share of the estate. The grant cannot stand. I find that the application has merits. I order that;

1. The grant issued to the respondent on 12.2.2009 be revoked.
2. The respondent is removed as the Administrator of the estate of the deceased.
3. I appoint the applicant under Section 66 of the Law of Succession Act to be henceforth the administrator of the estate of the deceased.
4. The estate of the deceased that is land parcel No. BARAGWI/GUAMA/671 shall be distributed equally amongst his three sons that is;
 - JACKSON NJERU MURIUKI - SON
 - NDAMBIRI MURIUKI - SON
 - DANIEL NGARI MURIUKI - SON
5. A fresh grant shall be issued in terms of this ruling.
6. Each party to bear it's own costs.

Dated at Kerugoya this 13th day of November 2019.

L. W. GITARI

JUDGE