



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

SUCCESSION CAUSE NO. 472 OF 2013

In the Matter of the Estate of Rufus Kiambati M'Ikuri (Deceased)

GLORY NKUENE RUFUS.....1ST PETITIONER

MARTIN KOOME KIAMBATI.....2ND PETITIONER

Versus

GEORGE KIRIMA MUGAMBI.....APPLICANT

JUDGMENT

[1] George Kirima Mugambi filed a Summons for Revocation of grant dated 13th July 2016 seeking revocation of grant made to the petitioners on 19th June 2006. He also sought for orders to set aside LR. NO. KIIRUA/NAAARI/MAITI/59 from the estate herein and cancel the registration of the deceased as owner thereof. He set out in the application, affidavit in support as well as the submissions the major grounds for applying to be:

(a) That the grant was obtained fraudulently by failing to disclose to court that there were other suits pending in court namely Succession Cause No 25 of 2005, HCCC NO 321 OF 1993 and ELC NO 95 OF 2013 on the suit property and the deceased or his personal representative is a party;

(b) That parcel number 59 belongs to his late father but the deceased abused office and registered the land in the name of his wife.

[2] The court ordered for visit of the land in issue and the report by the DR dated 31st January 2017 states that there are two parcels of land that is LR. NO NAARI/59 and NAARI/814. But none of the parties knew where the boundary is. I note that the suit land has been subject of litigation for over 37 years. The suits which have been filed thereto have not concluded. Some especially HCCC NO 321 OF 1993 is said to have abated. Others were withdrawn. There is a whole confusion which has been brought about by the numerous suits filed on the suit land. The grant herein is confirmed. As such rule 41 of the Probate and Administration Rules may not apply. In the circumstances, it is not possible to set aside the suit aside to await conclusion of litigation on ownership of the suit land. This court does not also have jurisdiction to try matters of ownership of land. The objector is also not a beneficiary in the estate. When I take all these factors into account, the only avenue open is for the objector to move with speed to have cases on the suit land concluded and if he succeeds, he shall then enforce the decree thereto against the administrators of the estate, who, in law must be parties in the suits he has filed. I do not find any sufficient reason under section 76 of the Law of Succession Act to revoke the grant herein. The section provides

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 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.

[3] Accordingly, I dismiss the application dated 13th July 2016. This matter should be brought to closure now. No orders as to costs.

Dated, signed and delivered in open court at Meru this 14th day of November 2018

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F. GIKONYO

JUDGE

In presence of

M/S Wambugu for M/s Kiome for petitioner

Objector in person – present

F. GIKONYO

JUDGE