



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT EMBU

SUCCESSION CAUSES NO. 362 OF 2010

In the matter of the Estate of EZEKIEL WANJOHI WANGO (Deceased)

NYAGA MUCHIRI.....APPLICANT

V E R S U S

MARGARET WANJIRU WANJOHI.....PETITIONER/RESPONDENT

R U L I N G

1. The summons in his application for revocation of grant dated 8/11/2012 seeks for revocation or annulment of grant issued to the respondent in this case and confirmed on 5/07/2012.
2. The applicant sets out several grounds as follows: -
 - a) *That the respondent included the applicant's land LR. Gaturi/Weru/705 in the list of distribution of the deceased's assets.*
 - b) *That the grant was obtained fraudulently and by concealing facts material to the case.*
 - c) *That the respondent was aware that the titles for LR. Gaturi/Weru/1034 and 1035 be cancelled and be restored to the applicant.*
3. The applicant testified that he had sold three (3) acres of land out of LR. Gaturi/Weru/1034 to the deceased who is the husband of the petitioner. During distribution of the estate, the petitioner gave LR. Gaturi/Weru/1034 to two beneficiaries namely Margaret Wanjiru Wango and Stephen Njau Wanjohi. At the time of distribution, the title had already been cancelled by the court and land restored to the applicant herein in PMCC No. 31 of 1996.
4. The applicant was the plaintiff in the civil case while the deceased Hezekiah Wanjohi Wango was the defendant. The applicant said there was no appeal against the judgment of the court thus rendering it valid and applicable herein.
5. Further that the original land Gaturi/Weru/705 was therefore non-existent and could not have been distributed in the succession cause. The applicant said that the Civil Case No. 31 of 1996 overruled the Eastern Province Appeal Tribunal No. 55 of 2000 which gave the land to the respondent. The decision of the Land Disputes Tribunal favoured the applicant by giving him his land. The applicant was unaware of the proceedings in this succession cause whereas he ought to have been informed to defend his interest.
6. In her replying affidavit, the respondent deposes that LR. Gaturi/Weru/705 was sold to her late husband by the applicant in 1975. Consent to transfer was obtained and transfer effected in the name of Hezekiah Wanjohi Wango. It is the respondent's evidence that the applicant became landless after selling the land.
7. This led to an agreement between the parties that the applicant be given two acres out of LR. Gaturi/Weru/705 for his use and livelihood. The respondent then proceeded to subdivide the land into two portions LR. No. 1035 measuring two acres for the applicant while the respondent's husband was to remain with LR. No. 1034 measuring 13 acres.
8. Before the respondent's husband transferred LR. 1035 to the applicant, a suit was filed against him claiming the whole land in PMCC No 31 of 1996.
9. The case was referred to the Disputes Tribunal for hearing. The award was to the effect that the applicant should subdivide the land and give only 3 acres to the respondent's husband.
10. The respondent further stated that on appeal to the Eastern Provincial Appeals Committee against the Tribunal's decision in Appeal No. 55 of 2000, LR. No. 1034 was given to the husband of the respondent. The applicant did not appeal against the decision of the Appeals

Committee.

11. The respondent states that after the death of her husband, she petitioned for letters of administration in this case which the court granted.
12. She states that the estate for distribution was LR. 1034 which belonged to her husband. As such, the respondent says that she did not conceal any facts material to the case because the Tribunal decision was rendered invalid by the Appeals Committee decision in appeal No. 55 of 2000.
13. Both parties filed submissions in support of their arguments which I have considered herein. Mr. Kathungu was for the applicant while Mr. Okwaro represented the respondent.
14. From the evidence adduced by the parties, I find that the following issues are not in dispute: -
 - a) *That the applicant was selling a portion of land measuring 3 acres to the respondent's husband Hezekiah Wanjohi Wango in 1976.*
 - b) *That the portion measuring 13 acres LR. Gaturi/Weru/1034 was registered in the name of Hezekiah Wango on 25/07/1976.*
 - c) *That the registration in the name of Hezekiah was cancelled on 8/01/2011 in pursuance of the decree issued in PMCC No. 31 of 1976.*
 - d) *That part of the orders in the decree in PMCC No. 31 of 1976 was that after consolidation of LR. No. 1034 and 1035, the applicant was to transfer three acres to Hezekiah.*
 - e) *That Hezekiah appealed against the Land Disputes Tribunal decision and appeal was successful in that it was ordered that the respondent should be registered owner of LR. No. 1934.*
15. In his response to the replying affidavit, the applicant deposes that the deceased Hezekiah died before the appeal was heard. The respondent too petitioned for letters of administration in this case before the appeal was determined and failed to disclose to the court that there was a pending land dispute.
16. The applicant failed to disclose to the succession court that the title for LR. Gaturi/Weru/1034 had been cancelled.
17. The applicant did not appeal against the ruling of the Eastern Province Appeals Committee delivered on 19/07/2011. In his submissions, the applicant castigates the ruling of the Appeals Committee as unprocedural. I am of the view that this court has no jurisdiction to determine the validity or legality of the said ruling in this forum. The applicant has not explained why he failed to challenge the said ruling in this forum. The applicant has not explained why he failed to challenge the said ruling if he was aggrieved by it.
18. On the other hand, the respondent did not implement the ruling by having the land L.R. 1034 registered in her name. Both parties produced very old title documents. The applicant relies on a title registered in 1967 for LR. Gaturi/Weru/705 and a copy of register issued on 10/01/2011 showing an entry for cancellation of titles for LR. 1034 and 1035 by virtue of the decree in PMCC No. 31 of 1976.
19. The respondent relies on the same copy of register which she presented in this succession cause for purpose of distribution.
20. The applicant did not produce a copy of register for LR. Gaturi/Weru/705 after consolidation. This means that no register was opened for the consolidated parcels after presentation of the decree to the Land Registrar.
21. In my view, the parties in this case are yet to take the necessary steps to bring to an end the longstanding land dispute.
22. The respondent presented a copy of register showing the land LR. 1034 belonged to her husband which document had an entry for the cancellation of the titles for LR. 1034 and 1035.
23. The grant was confirmed on 27/07/2012 while the order for cancellation was made in 2011 but not fully implemented as noted from the records. The existence of the decision of the Appeals Committee dated 19/07/2011 remains unchallenged. The combination of these two situations create doubt as to who between the applicant and the respondent's husband was/is the owner of LR. 1034.
24. The grant was obtained on 5/04/2011 and confirmed on 27/07/2012. The decree had been issued on 7/12/2004 while this case was filed six (6) years later. At the time the grant was issued and confirmed, the respondent had not obtained new registration of LR. 1034 in the name of her husband or in her name by virtue of the Appeals ruling. The court in issuing the grant must have acted on an oversight as the title of LR. 1034 was still valid.
25. Section 76 of the Law of Succession Act under which this application is brought provides for several grounds to which proof any of them may justify issue of orders for revocation or annulment of the grant. The applicant relies on the ground of obtaining the grant through fraudulent means or by concealment of facts material to the case.
26. From the evidence before this court, the applicant has shown that the respondent was aware of the cancellation of the titles for LR. 1034 and 1035 and did not disclose to the court. She was also aware of the appeal pending before the Eastern Province Appeals Committee.

27. On this single ground which has been satisfied, I allow the application for revocation.

28. The grant stands revoked only in relation to LR. Gaturi/Weru/1034.

29. Each party to meet their own costs.

30. It is hereby so ordered.

DELIVERED, DATED AND SIGNED AT EMBU THIS 5TH DAY OF NOVEMBER, 2018.

F. MUCHEMI

J U D G E

In the presence of: -

R. N. Mugo for Kathungu for Applicant

Ms. Nzekele for Okwaro for Respondent