



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MACHAKOS
SUCCESSION CAUSE NO. 440 OF 2014

IN THE MATTER OF THE ESTATE OF MIKO DANIEL KIMUYU (DECEASED)

DANIEL KIMUYU MICHAEL.....1ST PETITIONER/RESPONDENT

MUSYOKA MICHAEL2ND PETITIONER/RESPONDENT

AND

DANIEL MWOLOLO NGUMBAAPPLICANT

RULING OF THE COURT

The application

1. The Summons for Revocation of Grant before the court is filed pursuant to **Sections 47 and 76(b) and (c) of the Law of Succession Act and Rules 44(1) and 73 of the Probate and Administration Rules**. The Summons prays for the following orders;

- a. That this application be certified as urgent, and be heard ex-parte at the first instance.
- b. That pending hearing and determination of this application, the deceased's land parcel **No. Mavoko Town Block 3/2710** be preserved, and the respondents be restrained from transferring, charging, sub-dividing, developing or in any other way interfering with or disposal off the said land.
- c. That the confirmed Grant of Letters of Administration of the deceased's estate issued to **Daniel Kimuyu Michael and Musyoka Michael** on **5th July, 2016** be revoked.
- d. That the applicant be heard on his interest in the deceased's land parcel **No. Mavoko Town Block 3/2710** before the grant can be confirmed.
- e. That costs of this application be paid by the respondents.

2. The Summons is supported by affidavit of the applicant **Daniel Mwololo Ngumba** sworn on **26th September, 2016**.

3. The applicant's case is that he is a purchaser of a five (5) acres portion of the deceased's land parcel No. Mavoko town Block 3/2710, which he bought from the deceased, who was a member of Lukenya

Ranching and Farming Co-operative Society Limited, in or about the year 2005. The aforesaid parcel of land measuring forty (40) acres, was initially known as plot No. 209. By a letter dated 9th October, 2005, the deceased wrote to the aforesaid society (*Lukenya Ranching & Farming Co-operative Limited*) informing them that he had sold five (5) acres out of his said parcel of land to the applicant, and asking them to transfer the same to him. Although the deceased beaoned out the said five (5) acres for the applicant on the ground and put him in possession thereof, the actual excision and transfer of the same to the applicant had not been done as at the time the deceased died. In or about the year 2010, the applicant and several other purchasers of the deceased's aforesaid land registered a caution against the title, claiming purchaser's interest. The applicant's case is that the Petitioners/Respondents, who are sons of the deceased, have all along been aware of the applicant having bought five (5) acres of land out of the deceased's said parcel of land, and of the applicant having been in possession of the same for quite sometime. The applicant believes that the confirmed grant herein was obtained fraudulently by the making of false statement and concealment from the court of facts material to the case. The foregoing fact is clear from the petition documents filed herein, and in particular Form P&A 5 in which the petitioner/respondents indicated that the deceased had no liabilities, only to turn round and allege during confirmation of the grant issued to them herein that the deceased's aforesaid parcel of land should go to an entity known as TrueLands Holdings Limited. The applicant believes that the petitioners/respondents have not been honest and truthful to this court, and urges this court to so find.

The response

4. The application is opposed vide the replying affidavit sworn by **Musyoka Michael**, one of the Petitioners herein, on **11th October, 2016**.

5. The respondents' case is that the application is an afterthought, filed in bad faith and has absolutely no merit. Mr. Musyoka states that he always escorted his father whenever he had an issue with any of his properties and would even witness any document that he would sign. The respondents deny that the applicant herein is in possession of any part of the deceased's land.

6. The respondents deny that the grant was obtained fraudulently by making of false statement and concealment from the court of facts material to the case. The respondents' case is that the applicant's claim was resolved during the deceased's lifetime and the deceased made it clear that he had never entered into any agreement with applicant, and that the District Land Registrar ordered that the caution be removed. The respondents' case is that the deceased sold land reference number Mavoko Town Block 3/2710 to Truelands Holdings Limited on 27th April, 2010 and the deponent alleges to have personally witnessed the agreement whose copy is attached hereto marked MM1. The respondents allege that the applicant is trying to re-open the hearing of this matter through the back door since he has realized that he sat on his right by failing to file an appeal within the Thirty (30) days granted and/or at all during the deceased's lifetime and since the respondents are aware that their late father sold the entire land to Truelands Holdings Limited, there is no way they can interfere with the said land. The respondents' case is that having consented to the sale, they all consented to the distribution of the said parcel of land to Truelands Holdings Limited at the confirmation of grant. Their late father had indeed attended the Land Control Board for consent to transfer the aforesaid land to Truelands Holdings Limited in the year 2010.

Submissions

7. Parties made oral submissions to the application in court, which mirrored the opposing affidavits. I have considered the application and submissions. The only issue for determination is whether or not the grant herein was obtained and confirmed without material disclosure. To do this all this court needs is to scrutinize the contents of the Standard Forms which are filed in support of Letters of Administration and for Confirmation of Grant.

8. It is true that in Form P&A 5 filled and filed herein on **4th July, 2014** the petitioners had indicated that the deceased estate owned NIL liability. By this act, they had acknowledged that the entire estate was free for distribution among the beneficiaries. However, the Sale Agreement between the deceased and

Truelands Holdings Limited is dated **27th April, 2010**. This means that all along before the taking out of letters of administration, the petitioners were aware, or deemed to be aware of the said Sale Agreement, and hence aware that the estate had a liability, which ought to have been noted in Form P&A 5. Instead, the said form noted nil liability. It was therefore strange that when the grant was being confirmed Truelands Holding Limited was included as a beneficiary and given **Mavoko Town Block 3/2710**, the same plot the applicant claims pursuant to agreement copy attached herein as "DMNA". It is evident that the letters of grant, and the subsequent confirmation of the same were procured by material non-disclosure. Besides, the applicant's claim to the disputed plot is now hollow. There is a copy of an agreement to support the claim.

9. There is also evidence that at one time the applicant had registered a caution on the property to protect his interest. The circumstances under which the said caution was removed, are not clear, and remain controversial. However, this court is satisfied that the applicant has raised sufficient grounds to show his interest in the said property. That property cannot be distributed to Truelands Holdings Limited as purportedly done by the Petitioners.

10. For the foregoing reasons, the application before the court is allowed as follows:

- a. That the confirmed Grant of Letters of Administration of the deceased's estate issued to **Daniel Kimuyu Michael and Musyoka Michael** on **5th July, 2016** is hereby revoked.
- b. That the applicant be heard on his interest in the deceased's land parcel **No. Movoko Town Block 3/2710** before the grant can be confirmed.
- c. That costs of this application be paid by the respondents.

Order accordingly.

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E.K.O. OGOLA

JUDGE

DATED, SIGNED AND DELIVERED AT MACHAKOS THIS 14TH DAY OF FEBRUARY, 2017

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DAVID KEMEI

JUDGE

In the presence of:

Miss Ngugi – for Applicant