



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

SUCCESSION CAUSE NO. 274 OF 2014

IN THE MATTER OF THE ESTATE OF MUIRURI KIMANI – (DECEASED)

GRACE WANJIRU MUIRURI.....1ST APPLICANT

JOSEPH MWANIKI NJOROGE.....2ND APPLICANT

VERSUS

SAMMY WAWERU NJOROGE.....RESPONDENT

RULING

INTRODUCTION

1. By way of a summons for revocation of grant dated 23rd November, 2015, Grace Wanjiru Muiruri and Joseph Mwaniki Njoroge (hereinafter the 1st and 2nd applicants respectively) moved this court for orders:

1. Spent

2. That the certificate of confirmation of grant intestate dated 6th July, 2015 and the title obtained in respect of land No.Nakuru Municipality Block 2/227 belonging to the deceased and now in the name of the respondent Sammy Waweru Njoroge be revoked.

3. That the cost of this application be met by the respondent.

2. The application is premised on a supporting affidavit by the applicants and on grounds:

1. That the grant and confirmation herein relates to the estate of the late Muiruri Kimani who died on 27th July, 2011 obtained by the respondent, was obtained by making false statements, concealment and lying to the court that he is the sole beneficiary of the estate of the deceased thus being fraudulently obtained.

2. That the proceedings to obtain grant was defective in substance.

3. The application is opposed and a replying affidavit sworn by Sammy Waweru Njoroge (hereinafter the Respondent) is on record.

THE APPLICANTS' CASE

4. The gist of the applicants' case is that the deceased herein Muiruri Kimani was the husband to the 1st applicant and a father to the 2nd applicant.

It is the applicants' case that the respondent obtained the grant herein fraudulently by producing a fake Chief's letter naming him as the sole dependant of the deceased failing to disclose that the deceased had two (2) houses.

5. Subsequently after the confirmation of the grant, the respondent has gone ahead to sell a plot belonging to the estate.

6. Land parcel No.Menengai/Ndundori/Block 10 was omitted from the estate of the deceased.

7. It is urged that the applicants only came to know of the succession cause when strangers appeared to survey the plot in question.

THE RESPONDENT'S CASE

8. The Respondent's case is that the deceased had by an agreement dated 5th April, 2011 authorised him (Respondent) to finance a case involving plot No.NAKURU MUNICIPALITY BLOCK 2/227 and to subsequently inherit that parcel.

9. The Respondent successfully pursued the claim to fruition. The land was not transferred to him as the court directed that that would only happen in accordance to the Law of Succession.

10. Consequently the Respondent petitioned for grant of letters of administration for the purposes of compliance with the judgment of the court. That petition was purposely meant for the parcel of land in question and none of the applicants' herein were entitled to the proceeds of that case as the plot did not form part of the deceased's estate.

11. The applicants have filed a further affidavit denying the averments in the replying affidavit and reiterating that the grant was obtained fraudulently.

SUBMISSIONS

12. Both parties filed submissions. For the applicant reliance is laid **Section 76** of the **Law of Succession Act** which sets the threshold for revocation of a grant. The applicant must show that the proceedings to obtain the grant were defective in substance or that the grant was obtained fraudulently by making of a false statement or by concealment of something material or that the grant was obtained by means of untrue allegations of facts essential in point of law.

13. The respondent is accused of making false information by failing to disclose that the deceased was survived by others apart from the respondent. In his affidavit in support of the petition, the respondent indicates he was the only surviving beneficiary to the deceased.

14. The submissions attack the alleged gift of the plot to the respondent and the role played by the respondent in persuading CMCC No.508 of 2011. Indeed the decree in that suit was clear that the issue of whether the land would issue in the respondent's names would be determined under the Laws of Succession.

15. The respondent's submissions are in a nutshell that he obtained title to the property in a legal and procedural way. There was an agreement of ownership duly signed between the deceased and the respondent. There existed a contractual agreement. I am referred to the decisions in **L'Estrange V. F. Graudob Limited**, [1934] 2 KB 394, **Eliud Poro Ngele V. Eliud Poro Ngele & Another**, [2015] eKLR and **Trollope Colls Limited V. North West Metropolitan Regional Hospital Board**, [1973] 1WLR 601 at 609.

16. It is added that the magistrate's court did not have jurisdiction to determine matter of Succession of the suit property and the value of the property was beyond its pecuniary jurisdiction. The court thus ordered the matter be transferred to the Succession Court to determine the issues surrounding the estate.

17. The respondent is entitled to the suit property through transmission and the property was duly registered in his name. The rights of a registered proprietor under **Section 26** of the **Land Act** are indefeasible save for fraud or misinterpretation. This property did not belong to the estate as the deceased had entered into an agreement with the respondent gifting him (the respondent) the land.

18. It is submitted that the grant herein should not be revoked as the respondent followed up the issue of his gift. Same was confirmed. The chief's letter indicates that the respondent was the only beneficiary to the suit property. That letter does not refer to the entire estate. The applicants were aware of the petition but filed no objections or cross-petition.

ANALYSIS AND DETERMINATION

19. I have had regard to the application, the supporting grounds and affidavit, the replying and further affidavit and counsel's submissions on record. On the material before me, the issue for determination is whether the applicants have met the threshold for the revocation of the grant herein.

20. A lot of energy has been expended on explaining and/or justifying the ownership of the plot that was subsequently registered in the name of the respondent going way back to the genesis of the issue as seen in documentation from CMCC No.508 of 2011 and purported agreement between the deceased and the respondent herein and that only that plot was claimed in the succession cause.

21. I have applied my mind in that direction. Most telling is that the lower court had in CMCC 508 indicted that the issue of transferring the plot in the names of the respondent was to be dealt with under the Law of Succession. The import of that is that those in priority needed to have petitioned for letters of administration in which petition the issue of the gift agreement (if at all) would among other issues relevant to the estate of the deceased be canvassed. The bottom line being that such a petition would have to be procedurally done and one meeting the requirements of the law.

22. Which takes me back to the issue for determination which I consider the only relevant matter before me in so far as the summons for revocation of grant is concerned.

23. Does the application meet the threshold for revocation? **Section 76** of the **Law of Succession Act** provides:

“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”.

24. In the form P & A 5 (affidavit in support of petition for letters of administration intestate) filed by the respondent in petition No.274 of 2014, the respondent indicates that the deceased was only survived by the respondent (Sammy Waweru Njoroge).

25. That position is reiterated in the affidavit in support of summons for confirmation of grant again shown by the respondent in which he states in paragraph 4 thereof that the deceased was survived by him, a son.

26. There is now evidence that the deceased was survived by others as particularized in paragraph 3 of the joint affidavit of the applicants herein a fact that has not been controverted and which has been conveniently evaded by the respondent in his reply.

27. It is manifestly clear then that the grant herein was obtained fraudulently by the making of a false statement and concealment of a material fact and by means of untrue allegations of facts essential in point of law. That within the meaning of **Section 76 of the Law of Succession Act** is fatal to the grant issued.

28. From the respondent's stand point, he states he filed the petition to pursue what he rightfully believed to be his based on the purported agreement he had with the deceased. Indeed that is why he only dealt with the plot in issue.

This position taken is self defeatist. It is not tenable in law. There is no window open in the Law of Succession Act where a petitioner applies for petition restricted to what they lay on claim on. The least the respondent should have done would have been to file the petition procedurally and fight for his rights over the property within the cause if at all.

29. With the result that the grant herein was obtained in breach of the law. The applicants have met the threshold for revocation. The said grant is hereby revoked. In order to move the administration of the estate herein forward, a fresh grant is to issue in the names of Grace Wanjiru Muiruri jointly with Joseph Mwaniki Njoroge. The two shall take out a summons for confirmation of grant within the next three (3) months and serve all interested beneficiaries including the respondent herein. In the meantime an inhibition be registered against parcel of land No.Nakuru/Municipality Block 2/227 pending the determination of the Succession cause herein.

Dated, Signed and Delivered at Nakuru this 9th day of February, 2017

A. K. NDUNG'U

JUDGE