



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

SUCCESSION CAUSE NO. 93 OF 2016

In the Matter of the Estate of Johnstone Kirigia Kirimi (Deceased)

AUGUSTINE JOHNSTONE MOI KIRIGIA.....APPLICANT

Versus

CATHERINE MUTHONI ISUMALI KIRIMI.....PETITIONER

RULING

Revocation of grant

[1] Before me is a Summons for Revocation of Grant dated 18th December, 2015 and which is expressed to be brought pursuant to Section 76 of the Law of Succession Act CAP 160 of the Laws of Kenya and section 68 of Land Registration Act, 2012. The application seeks revocation of the grant issued to Catherine Muthoni Isumaki Kirimi on 2nd April 2014 to be revoked. He set out his reasons for so applying in the application, the affidavit in support and the written submissions filed herein. But the major grounds given are:-

- 1. THAT the Grant was obtained fraudulently by making false statement of fact.**
- 2. THAT the Grant was obtained by untrue allegation of fact essential in point of law to justify the grant.**
- 3. THAT the proceedings to obtain the grant were defective in substance.**

[2] The Applicant averred that a citation was issued upon the Petitioner and another sister called Mary Kathambi following their refusal to cooperate with the other members of the family on the filing of a succession cause for their deceased father, But, they did not appear or oppose the citation and so he filed cause number 451 of 2014. There being no objection after the said cause had been gazetted, he was issued with a grant. But before the grant could be confirmed he learnt that the petitioner had already been issued with a grant and subdivided the estate property into parcels number NKUENE/L-MIKUMBINE/2245-2249. And that she is keen on transferring the said lands in accordance with the grant herein. He stated that he was utterly shocked by the brazen and fraudulent conduct of the petitioner in the filing of this cause. He accused her of secretly filing a cause in order to disinherit the applicant and the other dependants. He said that he never consented to the filing of the cause by the petitioner and the signatures purportedly affixed by him were forgeries. He was also certain that the other beneficiaries did not affix their signatures to the consent form. He stated that the married sister intended to allocate herself a disproportionate share of the estate which was unfair. Again, he stated that the estate is worth millions of shillings and so Chuka court did not have jurisdiction to issue the grant. For those reasons he asked the

court to revoke the grant.

[3] In the submissions filed, the Applicant reiterated the averments in the affidavit in support. But emphasized that in spite of the record of court showing that all beneficiaries attended court during confirmation and that they had agreed on distribution of the estate, he insisted that he never signed the consent form as indicated. His name is even erroneously indicated to be Agostino Kimathi. In any event, the distribution is skewed in favour of the petitioner. He stressed that Chuka court lacked both territorial and pecuniary jurisdiction over this estate which is situated within Imenti South District, Meru and has a value beyond Kshs. 100,000. His conclusion was that the petitioner filed the cause at Chuka so that she could deceitfully obtain a grant and disinherit the other siblings. He accused her of not reacting to the citation and this petition for she had something up her sleeves. He asked the court to revoke the grant to the petitioner.

Petitioner told her story

[4] The petitioner told her story in the Replying Affidavit sworn on 1.2.2016 and submissions dated 19.8.2016. She averred inter alia that all siblings including the Applicant agreed that she files a cause at Chuka which she did and was given a grant of letters of administration. According to her, the entire process was above-board and all inclusive. And, therefore, the allegations that she filed the cause at Chuka secretly or that the signatures were forged are all falsehoods contrived by the Applicant. She stated that the Applicant attested to his own signature and affixed it voluntarily. In any event, she claimed that the Applicant was aware- her father, before his death, had allocated her 1 acre to be excised from the estate property. She produced letter of allocation. In addition, she stated that the family had also agreed to get 0.48 acres from the estate to take care of the costs of the succession, subdivision of and transfer of the estate to the beneficiaries herein. She stated that she had footed the entire costs thereof. According to her she just acted on the grant in subdividing the land herein- she termed the distribution to be fair and in accordance with the wishes of her deceased. She accused the Applicant of being driven by spite and greed in challenging the grant she is implementing. She denied ever being served with citation.

[5] She submitted and reiterated the gist of her affidavit. She however urged that the Applicant has not proved any of his allegations as to justify revocation of the grant herein. He failed to establish fraud or the fact that he did not sign the relevant consent. She quoted section 107 of the Evidence Act and then the case of Estate of Michael Githinji [2009] KLR. She beseeched the court to reject this application as nobody will suffer prejudice if the grant remains as is.

DETERMINATION

[6] I need not re-invent the wheel. A party who wishes a grant to be revoked must satisfy one or more of the grounds set out under section 76 of the Law of Succession Act which provides as follows:-

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 order or allow; 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

iv. that the grant has become useless and inoperative through subsequent circumstances.

[7] Looking at the arguments before me, I should consider whether the Applicant has shown through evidence that:-

(a) The proceedings to obtain the grant were defective in substance;

(b) 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) 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;

[8] The Applicant has alleged that the court at Chuka did not have jurisdiction to issue the grant herein. Except stating that the property is worth millions, he did not provide any evidence to show that the estate exceeded a value of Kshs. 100,000. The court cannot act on assumptions but on relevant materials. And as none was provided, I reject that argument. I uphold the grant. I move on to the other matters.

Fraud

[9] The Applicant has staked serious allegations of fraud. Other than stating that his signature was forged and that the name appended therein was Agostino Kimathi, he did not offer any concrete evidence to prove the kind of serious allegation I am seeing. He bore the burden of proof and should have been more vigilant. He did not offer evidence to support his claims on fraud. Courts of law will never act on impulse or imagination that something may have occurred. It must be shown by cogent evidence that it is highly probable that forgery of his signature occurred. No evidence whatsoever was offered towards that end. Again, none of the other siblings or family members seems to oppose the grant as had been anticipated by the Applicant. The Applicant may be moved by reasons other than quest for justice. He has not shown that

(a) The proceedings to obtain the grant were defective in substance; or

(b) 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; or

(c) 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.

The upshot is that I dismiss the application for revocation. I also note that Cause number 451 of 2014 was withdrawn on 20.12.16. There is therefore nothing to determine in that respect. Those are the orders of the court.

Dated, signed and delivered in open court at Meru this 20th day of March 2017

F. GIKONYO

JUDGE

In the presence of:

Mr. Gichuna advocate for Petitioner/Respondent

Mr. Ringera advocate for appellant

F. GIKONYO

JUDGE