



IN THE HIGH COURT OF KENYA

AT MURANG'A

SUCCESSION CAUSE NO 145 OF 2013

IN THE MATTER OF THE ESTATE OF KARIGITHE KAIRU-DECEASED

1. STEPHEN WACHIRA KARIGITHE

2. BENARD MUNYUA MWANGLI.....APPLICANTS

VERSUS

ALEXANDER MWANGI IKUU....ADMIN/1ST RESPONDENT

JOHN MAINA WAIYAI.....2ND RESPONDENT

R U L I N G

1. This ruling concerns the summons dated 03/03/2014 by which the Applicants, **Stephen Wachira Karigiithe** and **Benard Munyua Mwangi**, sought revocation of the grant in respect to the Deceased's estate herein, **Karigiithe Kairu**. That grant was made in **Murang'a PM Succession Cause No. 74 of 1978** to the 1st Respondent, **Alexander Mwangi Ikuu**, on 04/12/1998. It was subsequently confirmed and a certificate of confirmation of grant issued. By that certificate, the only property comprising the estate of the Deceased, LR Loc. 14/Kagumoini/713, was ordered to be distributed as follows –

Alexander Mwangi Ikuu 0.5 acres

Leonard Kairu Karigiithe..... 0.15 acres

Stephen Wachira Karigiithe..... 0.3 acres

John Maina Waiyai..... 0.35 acres

John Maina Waiyai is the 2nd Respondent in these proceedings.

2. The grounds for the application appearing on the face thereof are mainly the usual statutory ones under **section 76** of the **Law of Succession Act, Cap 160** –

(i) That the grant was procured by concealment from the court of something material to the cause.

(ii) That the grant was obtained by fraudulent misrepresentation and false statements made, or concealment from court of something material to the case.

(iii) That the proceedings to obtain the grant were defective in substance in that the 1st Respondent/Administrator never cited the 2nd Applicant who had a legitimate interest in the Deceased's estate by virtue of being his son.

(iv) That the grant was obtained by means of untrue allegations of fact essential in point of law to justify the grant.

There is an additional ground, to wit, that the confirmed grant completely disinherited the 2nd Applicant and “squandered or diminished” the 1st Applicant's share of the estate.

3. There is a supporting affidavit annexed to the application. It is sworn jointly by the Applicants. They state, *inter alia*, that they were the

Deceased's sons; that the Respondents were not related to the Deceased in any way; that the 1st Respondent/Administrator never cited the Applicants in his petition for grant as sons and therefore legitimate beneficiaries of the Deceased, and that therefore they never appeared before the court in the succession cause that resulted in the grant now sought to be revoked; that instead the 1st Respondent/Administrator brought in strangers to masquerade as sons of the Deceased; and that in all the circumstances of this case it is fair and just that the grant herein be revoked and the certificate of confirmation of that grant cancelled.

4. The Respondents opposed the application by a replying affidavit filed on 28/04/2014. It is sworn by the 1st Respondent. In the affidavit the Respondents concede that the Applicants and one **Leonard Kairu Karigithe** are the sons of the Deceased. The 1st Respondent further depones as follows, *inter alia* –

(i) That Leonard Kairu Karigithe died in July 2013.

(ii) That in July 1997 the aforesaid Leonard Kairu Karigithe sold to the 1st Respondent part (0.5 acres) of his share in the land comprising the Deceased's estate. His share measured 0.65 acres. The sale was by a formal written agreement which is annexed to the affidavit.

(iii) That the 2nd Applicant was not entitled to any share in the Deceased's estate as he had already received his inheritance *inter vivos* from the Deceased.

(iv) That by a written agreement the 1st Applicant sold part (0.35 acres) of his share in the Deceased's estate to the 2nd Respondent. A copy of that agreement is annexed.

(v) That both the 1st Applicant and the aforesaid Leonard Kairu Karigithe had no wives or children.

(vi) That in or about 1998, the Applicants, their brother Leonard Kairu Karigithe and the Respondents all went to the local assistant chief who gave them a letter of introduction to take to the local chief.

(vii) That the local chief then gave to the 1st Respondent, with the consent and authority of the three sons of the Deceased, authorization to file the succession cause that resulted in the grant now challenged.

(viii) That it was because of the sales mentioned above that distribution was ordered as it was in the certificate of confirmation of grant.

(ix) That the Applicants' application for revocation of grant is thus not merited, and that their affidavit sworn in support thereof is false.

(x) That the certificate of confirmation of grant was effectuated in 1989 by distribution of the estate, and fresh titles issued in 1990.

5. The Applicants never filed any answer to the detailed replying affidavit, and it was on that basis that on 22/02/2016 the court directed that the summons for revocation be heard by way of submissions upon the affidavits on record.

6. The Respondents' advocates filed their submissions on 06/09/2016. The Applicants' advocates never filed any submissions despite being granted more time to do so on 07/09/2016. There was no appearance for the Applicants at the hearing of the summons for revocation.

7. I have considered the submissions of the learned counsel for the Respondents. I have also perused the supporting and replying affidavits. It is to be noted that the application for revocation of grant was filed on 04/03/2014, more than nine (9) years after the grant was confirmed and the Deceased's estate distributed. No explanation for this long delay has been offered by the Applicants.

8. The Applicants never filed any response to the Respondents' replying affidavit. They therefore did not dispute all the essential facts deponed therein, including the sales by the 1st Applicant and his deceased brother Leonard Kairu Karigithe of the substantial portions of their anticipated inheritances to the Respondents respectively. It is also not challenged that the 2nd Applicant was not entitled to a share in the Deceased's estate as he got his inheritance *inter vivos* from the Deceased. Finally, the Applicants have not disputed that they gave the 1st Respondent authority through the local chief to petition for grant in respect to the Deceased's estate.

9. In these circumstances, the application now before the court is clearly an afterthought and cannot be granted. The court will not re-open a matter that was amicably settled nearly ten (10) years ago! The grant was confirmed and certificate of confirmation of that grant issued. The Deceased's estate was then distributed in accordance with the certificate of confirmation of grant about 1989 and new titles issued to the required beneficiaries about 1990. The 1st Applicant was one of those beneficiaries.

10. In the circumstances I find no merit in the summons dated 03/03/2014 for revocation of grant. It is hereby dismissed with costs to the Respondents. It is so ordered.

DATED AND SIGNED AT MURANG'A THIS 13TH DAY OF JULY 2017

H P G WAWERU

JUDGE

DELIVERED AT MURANG'A THIS 14TH DAY OF JULY 2017