

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 1512 OF 1998

IN THE MATTER OF THE ESTATE OF JOSEPH GITAU GIKONYO(DECEASED)

RULING

1. The deceased herein died on 23rd August 1994.
2. Representation to his estate was sought in a petition lodged in this cause on 29th July 1998, by Simon Gikomyo Gitau and James Rurigi Gitau, in their alleged capacities as sons of the deceased. He was expressed to have been survived by seven (7) children, three sons and four daughters – being Simon Gitau, James Rurigi, Peter Ndungu, Margaret Njeri, Hannah Wairimu, Mary Wanjiku Njuguna and Jane Waruiru Maina. He was also said to have died possessed of five (5) assets – being Ndeiya Makutano No. 917, Nguirubi Ndiuni No. 1412, Business Plot Kiroe Market No. 15A, Plot Kiroe Town No. T185, Ndeiya Makutano 1132 and National Bank Harambee Avenue Account No. 034 212 256.
3. A grant of letters of administration intestate was accordingly made to the petitioners on 6th October 1998. The said grant was confirmed on 20th May 2003, on an application dated 31st March 2003. The estate was shared out between the three sons and the two unmarried daughters of the deceased. A certificate of confirmation of grant duly issued, dated 20th March 2003.
4. The application I am tasked with determining is a summons for the revocation of the grant made on 6th October 1998. The said application is at the instance of one Henry Njoroge Kamau. The grounds and facts upon which it is premised are set out on the face of the application, as well as in the affidavit, sworn by the applicant on 14th May 2010, in support of the application.
5. The applicant's case is that one of the assets listed in the schedule as forming part of the estate did not in fact belong to the deceased, but rather to the applicant. The property in question being Ndeiya/Makutano/1132. He has attached to the affidavit a copy of a title deed in respect of the said property. The deed is dated 24th September 1996, and it indicates the registered proprietor to be Henry Njoroge Kamau. There is also copy of a search certificate dated 9th March 2010, indicating the proprietor of the said property as Henry Njoroge Kamau.
6. The reply to the application is comprised in an affidavit sworn on 24th September 2010 by James Rurigi Gitau, one of the administrators of the estate. He avers that the deceased had bought a portion of Ndeiya/Makutano/1132 from the applicant's step-mother, Margaret Wahu Gikonyo, adding that there has been a long running dispute over the land with that family, which ended up at the Land Disputes Tribunal. The portion allegedly bought measured one (1) acre out of the total acreage of 2.9 acres. He asserts that beyond that the applicant is not entitled to anything from the estate of the deceased. He adds that the one (1) acre out of Ndeiya/Makutano/1132 was allotted to him at the confirmation of the grant.
7. To buttress his case, the respondent attached copies of the proceedings conducted before the Land Disputes Tribunal. There are copies of the proceedings and verdict of the Kiambu Land Disputes Tribunal in Land/16/20/79/2000. The award was made by the elders on 27th July 2000, where the administrators of the estate herein were awarded one (1) acre out of Ndeiya/Makutano/1132. There is also copy of the award of the Provincial Land Appeal Tribunal in Kiambu 155 of 2000, dated 21st May 2009, where the applicant's appeal against the decision of the District Land Disputes Tribunal was rejected.
8. The applicant swore an affidavit on 6th October 2010 to respond to the reply by the respondent. He has

given a detailed history of the land. He concedes that the deceased herein had entered into a sale agreement with the applicant's step-mother, which he alleges was rescinded as the deceased did not pay the full purchase price. He concedes the proceedings before the District Land Disputes Tribunal and the Provincial Land Dispute Tribunal, but states that the two tribunals acted without authority. He also refers to a civil case at the Kiambu law courts, being Kiambu SPMCCC No. 462 of 1992, which terminated in favour of the respondents. He asserts that that court was misled. He too has attached a bundle of documents to his affidavit to support his arguments..

9. Revocation of grant is provided for under section 76 of the Law of Succession Act, Cap 160, Laws of Kenya. A grant would be revoked on the distinct grounds set out in that provision. They can be categorized into three (3) general grounds. One, would be the case where the grant is made through a defective process, attended by fraud and misrepresentation. The second, is where there are problems with administration. Such as where there is failure to collect assets, to apply for confirmation of the grant within the time stipulated in law and to account when called upon by the court to do so. The last ground is where the grant has become useless and inoperative due to the circumstances prevailing in the case.

10. The applicant appears to have grounded his application for revocation of grant on the first general ground, problems at the stage of applying for representation. His case is that the administrators in their petition had included in the list of assets a property that did not belong to the deceased. This could be classified as misrepresentation or fraud depending on the circumstances of the case. Such fraud or misrepresentation has the effect of making the proceedings defective, and therefore bringing them within the first general ground for revocation of grant.

11. Was the inclusion of Ndeiya/Makutano/1132 in the schedule a fraud or did it amount misrepresentation? From the material that has been placed before the court on the subject property, it is plain that the estate was entitled to one (1) acre from the said property. That was the only thing that the estate was claiming from the said asset. The applicant waged valiant wars at the Land Disputes Tribunal the Provincial Appeals Tribunal and the courts over this to no avail. There is therefore nothing before me which would convince me that the estate was not entitled to the one (1) acre out of Ndeiya/Makutano/1132. There was therefore no fraud or misrepresentation to warrant revocation of the grant.

12. Even if the respondents had listed a property that did not belong to the estate, or which was disputed, that by itself would not justify revocation of a grant. The mere fact that a property which ought not to be in the schedule is listed is not fatal to the grant, for that anomaly, whether inadvertent or by design, would be taken care of at the stage of transferring the assets to the beneficiaries by the land or property authorities.

13. In view of everything that I have said above, I have come to the conclusion that the application by way of summons for revocation of grant dated 6th October 1998 is wholly without merit. The same is hereby dismissed with costs to the respondent.

DATED, SIGNED and DELIVERED at NAIROBI this 3RD DAY OF JUNE, 2016.

W. MUSYOKA

JUDGE