



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT KAKAMEGA**  
**SUCCESSION CAUSE NO.557 OF 2012**  
**IN THE MATTER OF THE ESTATE OF PETER AYUKU NGAIRA (DECEASED)**

**AND**

**STANLEY SHIVACHI NGAIRA.....PETITIONER**

**VERSUS**

**1. MILLAH M. NGAIRA**

**2. ABIGAEL M. GITHUNGURI**

**3. MANOAH NGAIRA (Suing through**

**MILLAH NGAIRA as guardian ad litem.....OBJECTORS**

**RULING**

1. Before court is summons for revocation of Grant dated 9<sup>th</sup> December, 2015 and brought under **section 76** of the Law of Succession Act (Cap 16) laws of Kenya. The summons seek an order revoking Grant of representation made on 2<sup>nd</sup> December, 2013 to **Stanley Shivachi Ngaira** and confirmed on 28<sup>th</sup> October, 2014 and reverting land **Parcel Number South Kabras/Bushu/1518** in the name of **Manoah Ngaira** – deceased.

2. The summons is based on the grounds appearing on the face and on the affidavit sworn by **Millah M. Ngaira**, the first objector herein. The gist of the summons and the affidavit is that the property the subject of this cause namely **South Kabras/Bushu/1518**, was registered in the names of **Peter Ngaira** and **Manoah Ngaira**. **Peter Ayusu Ngaira** died on 30<sup>th</sup> April, 1996 and thereafter **Peter Shivachi Ngaira** petitioned this court for a grant of representation which was made and subsequently confirmed and the estate distributed. According to the objectors, this was improper since the land belonged to the deceased and the 3<sup>rd</sup> objector jointly which was not disclosed to the court.

3. During the hearing of the summons, **Mr Shivega** appeared for the objectors but there was no attendance for the petitioner. On ascertaining that the petitioner's counsel had been served, the court ordered the summons to proceed to hearing.

4. **Mr Shevega**, learned counsel for the objectors urged the summons and asked the court to grant the same. Counsel emphasised that the 3<sup>rd</sup> objector had a mental disability and may not have been aware of

what was going on when the petition was filed and during the confirmation Counsel submitted that the parcel of land was in the names of the deceased and the 3<sup>rd</sup> objector and for that reason it could not have been dealt with as if it belonged to the deceased alone. He therefore urged the court to annul the Grant and cancel the certificate of confirmation issued on 3<sup>rd</sup> November, 2014.

5. **Section 76** of the Law of Succession Act, gives the court power to revoke grants of administration at any time for good reason. It provides:-

Section 76:-

***“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 concealment from the court of something material to the case;***

***c) that the grant was obtained by means of 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***

***d) that the grant has become useless and inoperative through subsequent circumstances.”***

6. I have perused the petition filed by the petitioner on 24<sup>th</sup> July 2013, in which the estate of the deceased was given as **Parcel Number South Kabras/Bushu/1518**. To support this, the petitioner attached a search for the same property dated 29<sup>th</sup> May, 2013 which showed that the proprietor of the property was **Peter Ayugu Ngaira (deceased)** and that the property was registered in his name on 21<sup>st</sup> June, 1995 and a Title Deed issued on the same day. **Peter Ayugu Ngaira** passed on 30<sup>th</sup> April, 1996.

7. In the petition for Grant of letters of administration, the petitioner indicated that the 3<sup>rd</sup> objector, **Manoah Shivachi Ngaira**, was a beneficiary by virtue of being a brother to the deceased. During the confirmation of Grant, the petitioner allocated the 3<sup>rd</sup> objector 0.41 HA, and the 3<sup>rd</sup> objector is shown to have signed the consent on the mode of distribution.

8. However, in the summons to revocation, there are annexures to the supporting affidavit which show that the parcel of land was actually registered in the names of both the deceased and the 3<sup>rd</sup> objector. Annexure ‘MM2(a) is a copy of a Title Deed issued on 21<sup>st</sup> June, 1995 and ‘MM3’ a certified extract of the register. They both confirm this fact that the property was in joint names. There is also evidence that the 3<sup>rd</sup> objector has a mental problem which has not been disputed by the petitioner.

9. From the evidence on record, it is obvious that the petitioner misled the court that the land, the subject of these proceedings, belonged to the deceased alone. This was concealment from the court something

material to the case in terms of **section 76(b)** of the Act. The search used when petitioning for the grant, was false and fraudulent, to say the least. The petitioner knew that the land belonged to both the deceased and the 3<sup>rd</sup> objector but chose to mislead the court, so as to benefit from his fraudulent act. The fact of the land being in the names of the deceased and the 3<sup>rd</sup> objector would have been material during confirmation of the grant and distribution of the estate. There is also doubt that the 3<sup>rd</sup> objector signed the consent on the mode of distribution.

10. I am therefore satisfied that the objectors have laid a firm basis for revoking the grant of representation made by this court on 2<sup>nd</sup> December, 2013 and confirmed on 3<sup>rd</sup> November, 2014.

11. For the foregoing reasons, the summons dated 9<sup>th</sup> December, 2015 succeeds and I make the following orders:

***1. The Grant of representation for the estate of the late Peter Ayugu Ngaira made by this court to Stanley Shivachi Ngaira on 2<sup>nd</sup> December, 2013 and confirmed on 28<sup>th</sup> October, 2014 is hereby revoked and annulled.***

***2. The certificate of confirmation of Grant issued on 3<sup>rd</sup> November, 2014 is hereby cancelled.***

***3. The registration of Parcel No. South Kabras/1518 into the name of Stanley Sivachi Ngaira, Manoah Ngaira, John Ayugu, Frank Ayuku, Amosa Ngaira, Lydia Inyanyi Namutali and Edward Sayamalovi Juma effected on 20<sup>th</sup> February 2015 pursuant to the certificate of confirmation is hereby cancelled and the parcel of land reverts into the names of Peter Ayuku Ngaira (deceased) and Manoah Ngaira.***

***4. A new Grant of representation is hereby issued in the joint names of Stanley Shivachi Ngaira and Millah Ngaira.***

***5. Stanley Shivachi Ngaira do file summons for confirmation of Grant within thirty (30) days from the date hereof in default, Millah Ngaira will be at liberty to file the same.***

***6. The petitioner, Stanley Shivachi Ngaira do pay costs of the summons for revocation of Grant.***

Dated and delivered at Kakamega this 13<sup>th</sup> day of September, 2016.

E.C. MWITA

JUDGE