



REPUBLIC OF KENYA
HIGH COURT OF KENYA AT NAIROBI
FAMILY DIVISION- MILIMANI LAW COURTS
SUCCESSION CAUSE NO. 527 B OF 2007
IN THE MATTER OF THE ESTATE OF STEPHEN NJUGUNA IREGI (DECEASED)
BETWEEN
SAMUEL IREGI GITAU.....APPLICANT
AND
WANJIKU GITAU.....RESPONDENT

RULING

INTRODUCTION

The deceased, Stephen Njuguna Iregi, died on 5th June 2006.

Following his demise, Flaciah Wanjiru Kimani and Patrick Njuguna Iregi petitioned the Court for Grant of Letters of Administration of the deceased's Estate and the same was issued on 11th June 2007.

Subsequently, the administrators filed summons for confirmation of grant on 27th December 2007 and in a consent filed before this Court and adopted as an order of this Court on 13th November 2008, the parties agreed to the mode of distribution of the Estate and property referred to as Ruiru/KIU Block 2 (Githunguri) 2044 was to be allocated to Wanjiku Gitau (hereafter 'the Respondent'). The Grant was confirmed by this Court on 9th November, 2010 and the property was to be transferred to her. Following the failure by Patrick Njuguna Iregi and his co-administrator to effect the transfer, the Respondent moved the Court to have them compelled to transfer the said property. In that regard, on 3rd April 2014, Hon. Justice Musyoka in an Application for contempt against Patrick Njuguna Iregi, found him liable for contempt and committed him to civil jail for 30 days. Following the committal to civil jail, Samuel Gitau Iregi (hereafter 'the Applicant'), filed Summons for Revocation dated 9th April 2014, seeking to have the Grant issued to Patrick Njuguna Iregi and Flaciah Wanjiru revoked. The said Summons Application is the subject of this Ruling and the Applicant seeks the following orders:

1. ...

2. *That there be a stay of distribution of the Estate of the deceased as per the Order of this Honourable Court dated 9th November 2010 and other consequential orders pending the hearing and determination of the Summons for annulment.*

3. That the purported administrators obtained the grant irregularly.

4. That the purported administrators be condemned to pay costs.

The Application is based on the grounds that the administrators obtained the confirmed grant irregularly; the deceased's Estate has been misappropriated; and that they did not consent to the administrators.

THE APPLICANT'S CASE

In his Affidavit in support sworn on 9th April 2014, it was the Applicants deposition that they did not consent to the orders made on 9th November 2010 as the same were fraudulently obtained by the making of false statements, by the concealment from the Court of material facts, by means of untrue allegation of facts essential to justify the issuance of the Grant.

That, being a lawful son to the deceased, he is a beneficiary and that he has been left out of the present case in regard to his father's Estate. He argued further that the Administrators were aware of the foregoing but instead continued with the present proceedings in secret, to his exclusion, until on or about 4th February 2014 when he returned from Canada when he inquired about the possibility of developing one of his father's properties.

The Applicant asserted that his consent to the appointment of the Administrators herein was neither sought nor obtained, that he personally contributed to the deceased's Estate prior to and after moving to Canada among them being; the joint payment for the purchase of the plot at Ruiru, and the house at Umoja Estate in Nairobi. In that regard, it was his contention that that house at Umoja has since been allocated without his consent and that of the family members, and that he has no accounts of the proceeds of the rent collections from some of the deceased's rental houses.

According to Samuel Iregi Gitau, the Grant was irregularly obtained in that the necessary consents by persons of either equal or lesser priority to the making of the grant to other persons were not obtained as he together with his other brother who lives in Canada and siblings was never obtained. That the grant was obtained fraudulently as the Administrators forged the signatures to the consent and that the proposed distribution herein is unjust and disinherits him of his entitlements as a beneficiary and survivor to the deceased. According to Mr. Gitau, the signatures to the consent were forgeries as many of them never signed and neither of them participated in the proceedings that gave rise to the distribution.

Further to the foregoing, it was his position that the Administrators have not diligently proceeded to administer the Estate of the deceased and as such, he demands for the account of the proceeds of rent collection of several properties and he therefore urged the Court to order that they file an inventory or account of the administration since issuance of the Grant. In that regard, it was his further argument that in the proposed distribution, it is apparent that the properties he jointly bought with his father have been misappropriated and/or allocated to other persons contrary to the law and that the administrators have colluded to disinherit him and take a lion share of the Estate.

In his Supplementary Affidavit filed on 24th October 2014, Samuel Gitau Iregi deponed further that he moved to Canada where he has resided for the last 15 years and has never in any way participated in the present proceedings but only came to learn of the same when his brother was arrested, and further that on the day of the confirmation of the Grant, he was out of Kenya. Additionally, it was his contention that his brother, Geoffrey Karanja Iregi, who also resides in Canada is unaware of the present proceedings and has all along been in Canada during the subsistence of the present proceedings.

For the foregoing reasons therefore, the Applicant urged the Court to allow his Application and grant the orders sought therein.

THE RESPONDENT'S CASE

In her Affidavit in reply sworn on 18th March 2015, Wanjiku Gitau, the Respondent, opposed the Application for revocation by Samuel Gitau Iregi and asserted that the Application is not only a collusion by her grandchildren to deny her a gift from his son, but has also been filed as an afterthought and with mischievous intentions and as such, the Court ought to refrain to grant the orders sought therein, as the grant was issued regularly, procedurally and with the full knowledge and consent of all the beneficiaries.

That the entire process leading to the grant of the letters of administration was handled by the deceased's wife and her grandchildren and that she did not play any active role in the entire process and she therefore cannot be accused for fraud. Additionally, that all she did was to ensure that she was included as one of the beneficiaries in particular in regard to the parcel of land known as L.R Ruiru/KIU Block 2 (Githunguri), which she alleged was a gift *inter vivos* from the deceased.

It was her other contention that the evidence before the Court reveals that a consent of all the beneficiaries was not only sought but also obtained during both the initial stage of petitioning for letters of administration but also at the stage of confirmation. Further, that she also contended that the administrators have not diligently administered the Estate and as such, accounts of proceeds of rent collection of several properties ought to be adduced to the Court.

According to Wanjiku Gitau, the assertions that Geoffrey Iregi was out of the country are baseless as his passport indicates that he arrived in Canada on 27th August 2007 and yet the Petition was filed on 7th March 2007. In addition, that the interim grant was issued on 11th June 2007 while he was still in the country and that immigration stamps in the documents adduced herein indicate that he has been a regular visitor to Kenya, including before the filing of the Petition, after the filing of the same and in the course of the prosecution of the proceedings. Further, that he even attended the deceased's burial. From the foregoing therefore, it was his argument that Geoffrey and Samuel Iregi have been in constant communication and it cannot be that he was unaware of the present proceedings.

She contended further that the property in question was given to her by the deceased as a gift and it was bought at a price of Kshs 48, 000/=. That Geoffrey and Samuel have even approached her in past with the aim of purchasing the said property owing to the recent construction of the Eastern by-pass in its vicinity which has resulted to its increased value.

Finally, it was her deposition that if there was any forgery of signatures or any other pleadings filed in this matter that can only be explained by Patrick Iregi. Further, that if he was to admit to having forged either Samuel's or Geoffrey's signatures, he ought to be punished accordingly for committing perjury and forgery. As a result therefore, the Application for revocation is unmerited and ought to be dismissed with costs.

In her Written Submissions dated 27th April 2016, the Respondent gives a narration of the litigation history in the present matter. In her submissions, she asserts that by dint of **Section 76** of the **Law of Succession Act** and **Rule 44 (1)** of the **Probate and Administration Rules**, the present Application ought to fail as it has failed to meet the threshold laid out under the foregoing provisions. Accordingly, it was her submission that the evidence before the Court indicates that Patrick Njuguna Iregi's brothers gave him the consent to file the present Petition as they had executed all the requisite forms before they left the country and hence, the allegations that they were not in the country before the Grant was filed and that in any event, they have not tendered any evidence whatsoever to prove that they did not consent to the filing of the present Petition.

She argued that both Geoffrey and Samuel did not seem to be credible and truthful witnesses as their testimonies before the Court were contradictory in various aspects and as such, the Court ought to disregard the same. In that regard, she pointed out that Samuel claimed that he was never notified of the deceased's Estate and yet Patrick Njuguna Iregi testified that he was present in the first meeting when Patrick Njuguna was appointed as an administrator. Whereas Samuel alleges that he never signed any consent to be made in regard to distribution, Patrick produced various documents including the Petition, consent to Petition for Letters of Administration and a consent to the mode of the distribution of the Estate, all duly signed by Samuel.

While relying on the decision in **ANIL BEHARI GHOSH VS SMT. LATIKA BLA DASSI AND OTHERS {2013} EKLK** the Applicant contended that the evidence before the Court clearly indicates that there is no defect in the substance of the grant. Additionally, the Applicant cited the decision in **THE MATTER OF MIGORI PROBATE AND ADMINISTRATION CAUSE NO. 123 OF 2008 AND IN THE MATTER OF THE ESTATE OF THE LATE GLADIS ODINGA ORINDA, MISC CIVIL APP. NO. 1 OF 2013** and argued that the present Application is lacking in merit as no allegations of fraud have been proved.

The Applicant maintained that the Certificate of Confirmation of Grant clearly evidences that the same was filled by their lawyer and that no questions have been raised that their advocate erred in any way in the contents therein as other beneficiaries have been given their respective shares in accordance with the grant.

Finally, the Applicant placed further reliance on the decision **IN THE MATTER OF THE ESTATE OF KABEU KABUNGI ALIAS KABEU KABUNGI GACINI (DECEASED), KERUGOYA HCSC NO. 414 OF 2013** and submitted that the Application is lacking in merit and ought to be dismissed with costs as it has been proved that the Respondent was gifted the suit premises and the Applicant should honour and respect the same. Accordingly, that the grant was in any event obtained without any fraud or concealment of facts.

ISSUES

I have considered the submission and the respective pleadings of the Parties to this suit. I have also considered both the written and oral evidence given in Court in support of their contentions herein. The key issues that emerge for determination are whether the Application for revocation of Grant of Letters of Administration ought to be granted and whether the orders sought by the Applicant ought to be issued.

DETERMINATION

In that context; **Section 76 of the Law of Succession Act** outlines the circumstances under which the Court may order for the revocation or alteration of Grants. It states that:

“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

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

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In the present case, the Applicant's argument has sought to have the Grant revoked on the grounds that the same was obtained fraudulently and irregularly as Patrick Njuguna Iregi and Flaciah Wanjiru Kimani did not obtain either the Applicant's or his siblings' consent and that the signatures therein were forged. The consent filed by the parties through Counsel filed on 7th March, 2007 shows signatures appended against their names. Patrick Njuguna Iregi confirmed all his brothers gave their consents before they left for Canada. In that regard, I note that at the core of the dispute is ownership to the property known as L.R No. Ruiru/KIU/Block 2 (Githunguri) 2044 which had been distributed to the Respondent.

Pursuant to this Court's orders issued by Hon. Justice L. Kimaru, it was ordered that the said property be surrendered to the Respondent and a transfer be executed in that regard. That being an order of a competent Court with concurrent jurisdiction to this, this Court cannot interfere with the same unless moved under the appropriate law. As such, I shall not upset the finding of the Court in regard to the said property but I shall only limit myself to whether the present Application succeeds.

The question then that I must answer is whether the Applicant's and his siblings' signatures were forged and whether the Grant herein was obtained in secret as alleged. In that regard further, I note that the Petition for Grant of Letters of Administration was filed on 7th March 2007 and in the Affidavit in support of the Petition, the Administrators listed the deceased's sons and daughters, including the Applicant herein. In support of the Petition, the Administrators filed a consent in which the deceased's children consented to the Grant of Letters being issued to the Administrators. The said consent was recorded on 20th November 2006.

It is also not in dispute that the Parties herein filed a consent for the confirmation of the Grant on 22nd October 2008, and the deceased's children consented to the same as evidenced by their signatures therein, including the Applicant's. Subsequently, the consent was amended and filed in Court on 13th November 2008 with the said Parties again appending their signatures thereto. As can be discerned from the consent, the said signatures were appended in the presence of one Learned Advocate Mr. John W. Njagi. Has the Applicant made out a case in support of his allegations of forgery? My answer to this question is in the negative. I hold so because, the Applicant has not rebutted the assertion as pointed out by the Respondent that he was present at the first meeting when the family met and chose Patrick Njuguna Iregi as an administrator. From that, it is an inescapable conclusion that the Applicant was all along aware of the present proceedings and his contentions that he was not aware cannot in any way stand. That notwithstanding, the Applicant is under an obligation to discharge his burden in regard to his allegations pertaining to fraud. It should not be lost to the Applicant that **Section 109 of the Evidence Act, Chapter 80 of the Laws of Kenya** places the burden of proof on him. The Section provides that:

“The burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie in a particular person.”

In my view therefore, I am not satisfied that the Applicant has made out a case in support of his allegations in regard to forgery of the signatures. No material has been placed before me, for instance expert testimony of handwriting experts in support of the allegations of forgery. The Applicant has merely asserted forgery of the signatures but no further evidence has been adduced in that regard save for his various documents in support of his contentions that since 27th August 2007, he has been in Canada. Furthermore, I am perplexed that the Applicant did not at any point in the proceedings wish to have the advocate, Mr. John W. Njagi, summoned and cross-examined since he was the one who witnessed the signing of the consent in regard to the confirmation of the Grant. The grant was issued in 2007 and confirmed in 2010, yet the issue of lack of consent to appointment of administrators took 3 years to be raised. More so after, the Respondent, the deceased's mother pursued transfer of the gift *inter vivos* the said suit property where the co administrator was held in contempt. The facts depict this instant application an afterthought. I am not satisfied that the Applicant has made out a case in support of his

allegations of forgery and as such, I am inclined to disregard those assertions.

In conclusion, pursuant to **Section 76** of the **Law of Succession Act**, the Applicant is entitled to have the Administrators produce an inventory or account of the administration of the Estate and as such, I shall allow the same.

DISPOSITION

Based on my findings above, I am inclined to find the present Application unmerited and grant the following orders:

- a. **The Summons for revocation of 9th April, 2014 is hereby dismissed.**
- b. **The Administrators, Patrick Njuguna Iregi and Flaciah Wanjiru, do undertake their duties in line with Sections 82 and 83 of the Law of Succession Act.**
- c. **The Administrators, Patrick Njuguna Iregi and Flaciah Wanjiru, do produce to the Court an inventory or account of the administration of the Estate of Stephen Njuguna Iregi within 60 days from the date of this Ruling.**
- d. **Let each Party bear their own costs to this Application.**

DELIVERED DATED & SIGNED IN OPEN COURT ON THIS 5TH DAY OF SEPTEMBER, 2016

M.W. MUIGAI

JUDGE

In the presence of:

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