



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
PROBATE AND ADMINISTRATION DIVISION
SUCCESSION CAUSE NO. 1743 OF 2014

IN THE MATTER OF THE ESTATE OF NGOMO MWAURA (DECEASED)

TABITHA WAMBUI NJAU

TERESIAH WANJIRA

EDWARD CHEGEAPPLICANTS

GEORGE WAWERU

JOSEPHAT NJANE NGOMO

JANE NYOKABI KIHUHIA

-versus-

ALICE NJERI NGOMO.....RESPONDENT

RULING

1. This is a Summons for the revocation of Grant dated 23rd May 2014 brought under **Section 47, 48** of the Law of **Succession Act** and **rules 73** of the **Probate and Administration Rules, article 159(2)** of the **Constitution**. The Applicants pray for orders:

- 1) That pending the hearing and determination of this application the Respondent be restrained from transferring, charging, alienating or dealing in any other way that will interfere with the Applicants’ interest as bonafide beneficiaries of the Estate of Ngomo Mwaura (deceased) on title Ngenda/Githunguchu/1518.
- 2) That the court be pleased to revoke/anull Certificate of confirmation of Grant issued to the Respondent on 23rd May 2012 in Succession Cause No.456 of 1999 for the Estate of the late Ngomo Mwaura, by the Chief Magistrate’s Court at Thika and declare illegal null and void all consequent transactions and registrations antecedent thereto.
- 3) That the court do compel the Respondent to produce to court certificate of title Ngenda/Githunguchu/1518 issued in her favour via the said Certificate of Confirmation

of Grant to be declared illegal, null and void and the same be revoked/cancelled.

4) That the court do direct the Police/The office of the Director of Public Prosecutions to investigate the Respondent with a view of commencing criminal charges against the respondent in view of the fraud and forgery complained herein.

2. This application is supported by the affidavit sworn by George Waweru Ngomo one of the Applicants on 28th May 2014, in which he deponed that the Applicants came to realise that the Respondent *exparte*, hijacked the proceedings in Succession cause No. 456 of 1999, Thika upon the death of their mother who was the Administratrix of the Estate and through fraud, forgery and misrepresentation and concealing of material facts prosecuted the cause without the participation, knowledge and consent of the other beneficiaries of the estate.

3. That the Applicant avers that a certificate was issued to the Respondent on 23rd May 2012 which she used to solely confer and transfer exclusively to herself, the title to Ngenda/Githunguchu/1518 without including the applicants who are also beneficiaries of the Estate. That in the circumstances it is in the interest of justice that the honourable court do revoke the said Certificate of Grant and the title thereto following the Respondent's acts which are unfair, greedy and amount to intermeddling of the Estate and abuse of the court process.

4. The Respondent was served with the summons for revocation which was indicated to be coming up for hearing on 28th July 2014. She directed the process server to her Advocate Muturi Njoroge and Co, who were duly served and an affidavit of service dated 2nd July 2014 filed in court. Both parties appeared in court on 28th July 2014 when Muchelule J gave direction that the Respondent should file a response to the summons, within 14 days from the date on which they were in court.

5. The summons came up for directions on 29th October 2014. The date had been taken *exparte* by the Applicant and served upon the Respondent as was evinced by the affidavit of service dated 29th October 2014. The Respondent did not appear and neither had she filed her response as directed by the court. Mr. Okemwa for the Applicant urged the court to allow the application since it was not contested.

6. For better understanding of the issues raised in this application I have perused the proceedings in Thika succession cause No. 546 of 1999, which was transmitted and consolidated with this cause. The Deceased Ngomo Mwaura to whose Estate these proceedings pertain died on 30th July 1999 while domiciled in Kirangari sub-location of Ngenda location in the Republic of Kenya. He was survived by the following beneficiaries:

- | | | |
|---------------------------|---|-------|
| 1) Esther Njeri Ngomo | - | widow |
| 2) Samuel Thuo Njau Ngomo | - | son |
| 3) Joseph Kagia Ngomo | - | son |
| 4) Peter Kihuhia Ngomo | - | son |
| 5) Alice Wanjiru Ngomo | - | son |
| 6) Josephat Njagi Ngomo | - | son |
| 7) Edward Chege Ngomo | - | son |
| 8) George Waweru Ngomo | - | son |

7. The widow petitioned and obtained a grant of letters of Administration intestate to the Estate of the deceased on 2nd May 2000 vide Chief Magistrate's Succession Cause No. 456 of 1999 of Thika. All

the beneficiaries to the said Estate were present in court and consented to the grant of letters of Administration issued to the widow solely. The Grant was confirmed vide Certificate of Confirmation of Grant dated 3rd July 2001 and the entire Estate of the Deceased devolved to the Administratrix absolutely, in accordance with paragraph 7 of the supporting affidavit. The widow inherited the following property:

- 1) Ngenda/Githunguchu/1518
- 2) ¼ share of Ngenda/Githunguchu/895
- 3) Plot No. 5 Gatundu
- 4) ½ share of Ngenda/Githunguchu/898
- 5) Thika Municipality Block 21/21
- 6) Dairy Farm Company Ltd

8. On 15th March 2006 the Administratrix successfully applied for and was granted by the subordinate court, orders of rectification of the Grant issued and confirmed to her, to reflect that land parcel No. **L.R. No. Ngenda/Githunguchu/1518** be registered in the name of one of the beneficiaries, being Alice Wanjiru Ngomo solely. (hereinafter Alice) The reasons as can be deduced from her affidavit in support filed on 9th February 2006 are that Alice was unmarried, had children depending on her and was the only one caring for her aged mother, the Administratrix.

9. The Administratrix subsequently died on 19th July 2011, whereupon Alice petitioned the court for orders of rectification of the Grant, to substitute her name in place of that of the Administratrix and for the parcel of land No. L.R. Ngenda/Githunguchu/2518 to be described as Ngenda/Githunguchu/1510. The orders were allowed and the rectified Grant and the Certificate of Confirmation of grant both dated 28th May 2012 issued to her.

10. On 30th August 2012 George Waweru Ngomo (hereinafter the Applicant) filed a Chamber Summons under **Section 74 Rules 49 and 73 of the law of Succession** in the Chief Magistrate's Court at Thika, seeking orders that the rectified Grant issued to Alice dated 28th May 2012 be cancelled/reviewed or rectified and land parcel No. Ngenda/Githunguchu/1510 reverted back to the Estate of the Deceased for re-distribution among all the beneficiaries equally. The ground of the application is that the Respondent fraudulently and without informing other beneficiaries obtained both the grant and land parcel No. Ngenda/Githunguchu/1510. The application was supported by his affidavit sworn on 20th December 2012 in which he reiterated what was contained in the prayers and the ground of the application.

11. From the record I note that the other beneficiaries were neither informed nor was their consent obtained before the granting of the orders sought in the terms prayed by the Administratrix in her summons for rectification. It is however observed that the terms of paragraph 7 of the supporting affidavit to the application for confirmation of grant were that the Administratrix would administer the estate of the deceased alone and that the entire Estate devolved to the Administratrix absolutely. She was not to hold it in trust for the other beneficiaries. Once the grant was confirmed on 3rd July 2001 therefore the Administratrix was within her right to gift any of the properties that had devolved to her to any of her children *inter vivos*.

12. The situation changed in 19th July 2011 when the Administratrix died. Alice could not purport to petition the court for rectification of the grant which was issued to the Administratrix to substitute her name for that of the Administratrix who was now deceased. That grant had served its purpose. The subject Estate had been distributed and the property had passed to the Administratrix. Upon the death of the Administratrix Alice was required to petition the court afresh for letters of Administration intestate for

the Estate of the Administratrix and not that of the deceased. She was then required to seek the consents of all the other beneficiaries, because this was no longer the Estate of Ngomo Mwaura.

13. For the foregoing reasons only prayer No. 2 in the application dated 23rd May 2014 can succeed in the circumstances of this case. It is therefore ordered that:

1) The certificate of confirmation of grant issued to the Respondent on 23rd May 2012 in Succession Cause No. 456 of 1999 to the Estate of Ngomo Mwaura at Thika Law Courts is hereby revoked. All transactions flowing therefrom are declared null and void.

2) The grant issued to the Administratrix on 2nd May 2000, the certificate of confirmation thereof dated 3rd July 2001 and the orders for the rectification of the grant issued on 15th March 2006 which have not been impugned are allowed to stand.

It is so ordered.

SIGNED DATED and **DELIVERED** in open court this **10th day of February 2015.**

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L. A. ACHODE

JUDGE