



**REPUBLIC OF KENYA**

**High Court at Nairobi (Nairobi Law Courts)**

**Succession Cause 2622 of 1999**

**IN THE MATTER OF THE ESTATE OF MUIRU GIKANGA-(DECEASED)**

**RULING**

The application for determination in the summons for revocation dated 9<sup>th</sup> July 2004. It is premised on **Section 3A** of the Civil Procedure Act. It seeks revocation of grant and prohibitory orders with relation to parcel number Limuru/Bibirioni/1602.

This cause relates to the estate of Muiru Gikanga, who died on 29<sup>th</sup> September 1982. According to the papers lodged in court in the application for the grant, he was survived by seven (7) persons namely;

- (a) Ruth Gacheri Muiru - widow
- (b) Hannah Wambui Muiru – widow
- (c) Humphrey Githaiga Muiru – son
- (d) George Gathera Muiru – son
- (e) James Waiganjo Muiru – son
- (f) David Wakahiu Muiru – son
- (g) Francis Mwaiko Muiru – son

The assets forming the estate are listed to include:-

- (a) Limuru/Bibirioni/1647-9 acres (split with LR Nos. 1787 and 1788)
- (b) Limuru/Bibirioni/1602

The grant was sought by and made to Humphrey Githaiga Muiru on 20<sup>th</sup> June 2000.

Subsequently, Humphrey Githaiga Muiru, as administrator, filed a summons for confirmation of the grant. The summons was dated 28<sup>th</sup> February 2001. The summons dealt with only one property Limuru/Bibirioni/1602. The grant was confirmed on 28<sup>th</sup> November 2001. The property Limuru/Bibirioni/1602 was to be held in trust by the administrator, Humphrey Githaiga Muiru, for himself and the other beneficiaries in equal shares.

Limuru/Bibirioni/1647 was left out of the confirmation as at the date confirmation was being sought it had ceased to belong to the deceased. It transpired that Fredrick Francis Mwaniki Muiru had obtained representation to the estate of the deceased from the Kiambu Magistrates Court's in Senior Resident Magistrate's Court Succession Cause No. 39 of 1985. Limuru/Bibirioni/1647 was confirmed to him, on the basis of the said grant and he caused Limuru/Bibirioni/1647 to be subdivided into Limuru/Bibirioni/1787 and 1788. He then purported to sell the subdivisions to Peter John Gakonde Nyaga and Cyrus Komo Chege. The Kiambu grant was revoked in 1986.

After confirmation of the grant made in this cause to Humphrey Githaiga Muiru, Peter John Gakonde Nyaga moved the court in the summons dated 9<sup>th</sup> July 2004 seeking revocation of the grant. In his affidavit in support of the application, he avers that the property the subject of the certificate of confirmation dated 28<sup>th</sup> November 2001 was his property as he had bought it from Fredrick Francis Mwaniki. He asserts that he has been in possession and occupation since 1985. In his written submissions the applicant asserts that he is entitled to the property by dint of the principle of adverse possession.

The law governing revocation of grants is **Section 76** of the Law of Succession Act. There are several grounds upon which a revocation may be predicated:-

- (a) That the proceedings to obtain grants were defective;
- (b) That grant was obtained fraudulently by the making of a false statement or concealment of something material;
- (c) That the grant was obtained by means of an untrue allegation of a fact essential in a point of law;
- (d) That the grant holder has failed to administer the estate diligently
- (e) That the grant has become useless and inoperative.

The applicant has not made an attempt to bring his application within the ambit of **Section 76**. There is no allegation nor evidence that the proceedings to obtain the grant were defective, nor that it was obtained fraudulently, nor that it was founded on untrue allegations of fact, nor that the administrator has failed in his responsibilities, nor that it has become useless and inoperative.

The applicant only asserts that the property belongs to him as he bought it from a brother of the administrator who sold it to him on the basis of a grant that was subsequently revoked and that he had also been in continuous occupation and possession of the property since 1985, for a period of over 12 years, and therefore he was entitled to it by virtue of adverse possession. To my mind the issues raised by the applicant do not bring this application within the realm of **Section 76** of the Law of Succession Act, and if they do there is no evidence to support his allegations. The nature of this application necessitated receipt of **viva voce** evidence. The issues raised could not adequately be disposed of through affidavit evidence, particularly in a matter such as this where the parties appear in person.

The applicant ought to have sued the estate in the civil or land court in a suit properly brought under the provisions of the Civil Procedure Act and Rules. He could claim for a declaratory order that the property the subject of the succession proceedings was his as he had validly acquired it in a sale conducted in accordance with the law, and that the administrator of the estate was bound to recognize the sale. The issue touching on the validity of the alleged sale is not a matter for the probate court, but for a civil or land court. Secondly, he could claim for a declaratory order that he was entitled to be registered as proprietor of the property by dint of adverse possession. Such a declaration cannot be made by a probate court.

I find no merit in the application dated 9<sup>th</sup> July 2004 and I hereby dismiss it with costs.

**DATED, SIGNED and DELIVERED at NAIROBI this 7<sup>th</sup> DAY OF MARCH, 2013.**

**W.M. MUSYOKA**

**JUDGE**