



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KITALE**

**SUCCESSION CAUSE NO. 31 OF 2004**

**IN THE MATTER OF THE ESTATE OF FREDRICK FRANK MANG'ENI.....DECEASED**

**JOSEPH MANG'ENI.....APPLICANT/OBJECTOR**

**VERSUS**

**JULIUS MANGENI.....PETITIONER/RESPONDENT**

**R U L I N G**

This is a ruling based on the summons for revocation of grant dated 28/7/2015 in which the applicant/objector prays that the confirmation of grant issued on 17<sup>th</sup> July 2008 be revoked on the grounds that the same were obtained by fraud and concealment of material facts. It is supported by the affidavit of Joseph Mang'eni the applicant sworn on the said date.

According to the applicant the deceased, his father, who died on 19<sup>th</sup> August 2001 had the following children;

- (a) Julius Mang'eni – the respondent
- (b) Laura Miriam Nabwire – deceased
- (c) Joseph Mangeni

He stated that he had been living in Ethiopia and when he came back to Kenya he found that the respondent had applied to succeed the estate of their father but left him out. He said that his attempt to get his rights through a power of attorney given to one John Khauka Wanasamba was fruitless. He therefore urged this court to revoke the grant. He equally attached copies of the green cards which showed that the respondent had since sub divided the only land left by the deceased into three portions namely **Waitaluk/Kapko Block 5(Lolkerinet) 126, 127 and 128** and that parcel No. 127 had been transferred to one Elizabeth Nyambiro Lutomia.

On his part the respondent vide his replying affidavit sworn on 8/9/2015 has argued that the application is misconceived and has been brought too late in the day. He argued that truly the applicant is his brother but has been away in Ethiopia for all these years. That the applicant should instead give an explanation on the properties left behind by the deceased in Ethiopia. He stated that he had already spend colossal sum of money in developing the matrimonial house situate on the suit land and he attached photographs to that effect. In short he has carried out developments on the said property and

this court should not disturb the current status quo.

The parties then proceeded to file written submissions which I have had the chance to peruse through as well as the attached authorities. It is clear that the provisions of Section 76 of the Succession Act Cap 160 Laws of Kenya clearly stipulates the grounds for annulment of grant. The same states that the grant may be revoked at any time through an application by a party or on its own motion.

The grounds are

- 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 untrue allegation of a fact essential in part of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently."**

Based on the evidence on record, there is no doubt that the applicant was the deceased son. This was never disputed by the respondent his brother. The only argument by the respondent is that at the time of filing the proceedings the whereabouts of the applicant was unknown. I find this preposterous and to say the truth pure lies for the reason that in his own admission he knew that the applicant was based in Ethiopia. He even goes ahead to suggest that the applicant should be able to share the properties left behind by the deceased in Ethiopia.

I find that at the time of making the application he knew that he had another brother who was in Ethiopia. What was so difficult in notifying the court? Even if he knew that it was going to be difficult for him to participate at least he ought to have concealed to the court. It is therefore in my view superfluous for the respondent to suggest that the applicant ought to share with the respondent the properties which the deceased left in Ethiopia while he has not attached any evidence to that effect.

Although the applicant was born in Ethiopia, there is nothing to suggest that he was not sired by the deceased a fact not disputed by his brother.

Needless to say should there be any evidence later that the deceased left known property in Ethiopia then it shall be dealt with as per the laws governing deceased estates in Ethiopia. This court respectfully has no such jurisdiction to deal with.

Having stated above I find that the grant obtained by the respondent was tainted with fraud. He did not disclose that the applicant his own brother existed. Had he done so this court perhaps would have arrived at a different verdict which ought to have incorporated the rights of the applicant.

Consequently I shall revoke the grant issued on 19<sup>th</sup> June 2005 and confirmed on 17<sup>th</sup> July 2008. I shall then proceed to appoint both the applicant and the respondent as joint administrators of the estate of their deceased father Fredrick Frank Mangeni.

Further and since the parcel of land had been sub divided into three portions it is necessary that the status quo ante be restored. In the premises titles number Waitaluk/Kapkoi Block 5/Lolkeringet/126, 127 and 128 are hereby revoked and cancelled with all the attendant consequences and the same revert to Waitaluk/Kapkoi Block 5/Lolkeringet/93.

In the interest of justice and pursuant to Rule 73 of the probate and Administration Rules I shall proceed to order that the aforementioned parcel of land namely Waitaluk/Kapkoi Block 5/Lolkeringet/93 be divided equally between the applicant and the respondent. That is 3.197 Hectares respectively.

Since it is not contested that the respondent has undertaken completion of the home his portion shall be that which incorporates the said home.

It has been suggested that one Elizabeth Nyambiro Lutomia did purchase from the respondent a portion of the suit property. So as not to cause any hardship to the parties, and if this is true, then the respondent shall excise his portion so that the said purchaser shall have her portion. I take this view as there was no evidence that the said purchaser bought the portion from the deceased neither did the applicant benefit from the proceeds.

Finally there was the issue of the money at Standard Chartered Bank which was utilised by the applicant to treat himself. Since there was no contention on the part of the applicant I shall not disturb the same.

In summing up, it is clear that had the respondent not concealed the presence of the applicant this court would have long settled the matter. However I find that the above findings would ensure that the applicant get his rightful inheritance and that the respondent does not loose anything either except time which I find that he was the author of.

In conclusion I make the following orders;

- 1) The grant issued on 29/6/2005 and confirmed on 17/7/2008 is set aside.**
- 2) A fresh grant is issued and confirmed in the names of Joseph Mang'eni and Julius O. Mang'eni.**
- 3) Titles Nos Waitaluk/Kapkoi Block 5, (Lolkerenget) 126, 127 and 128 are hereby revoked together with all attendant consequences and the same reverts to Waitaluk/Kapkoi Block 5/Lolkeringet/93 in the name of Fredrick Frank Mangeni.**
- 4) Land parcels Nos Waitaluk/ Kapkoi block 5 above administrators so as each shall get 3.197 hectares or thereabouts.**
- 5) The Respondent Julius O. Mang'eni shall get the portion comprising the already developed family houses.**
- 6) The portion due to one Elizabeth Nyambiro Lutomia if any shall be exercised from the respondent portion.**
- 7) Each party to meet their respective costs.**

Delivered this 5<sup>th</sup> day of December 2016.

**H.K. CHEMITEI**

**JUDGE**

**In the presence of;**

**Khisa for the Petitioner**

**Kiarie for the Respondent**

**Kirong – Court Assistant**



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