



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT BUSIA

SUCCESSION CAUSE NO.151 OF 1989

IN THE MATTER OF THE ESTATE OF THE LATE CORNEL OKUMU MANYURU (DECEASED)

JOHN WABWIRE ONJALLA.....PETITIONER

AND

KELESENSIA NAFULA.....1ST OBJECTOR

PETER MANYURU.....2ND OBJECTOR

AND

VIOLET KERUBO RATEMO

ELIZABETH BONARERI RATEMO(suing as the administratrixes of the estate of the

late CHRISTONER RATEMO OUNDU (DECEASED).....INTERESTED PARTY

R U L I N G

[1] The application dated 28th October 2014 by the objectors is for revocation of the grant issued to the petitioner on 5th July 1990 and confirmed on 19th January 1991. It is without doubt that the application was made quite belatedly after the confirmation of the grant in the year 1991, thereby implying that the estate subject of this cause is already spent with nothing more left for distribution to the rightful beneficiaries of the estate.

Be that as it may, the subject grant was actually confirmed on the 18th January 1991 in favour of the petitioner, **John Wabwire Onjala** to the extent that the estate property described as land parcel **No.Bukhayo/Mundika/395**, was wholly transmitted to him as the sole beneficiary.

[2] Several years thereafter, an application dated 10th July 2014 for the revocation of the grant was made by the objectors, **Peter Okumu** and **Kelesensia Nafula Manyuru**, but this was seemingly abandoned for the present application dated 28th October 2014, based on the main ground that the grant was obtained fraudulently by the making of false statement and/or by concealment of material information such that rightful heirs of the estate were excluded from the distribution of the estate and non-beneficiaries were included. All these facts were highlighted and fortified by the averments in the supporting affidavit of 28th October 2014.

[3] Along the way in the year 2015, a total of nine (9) interested parties were co-opted into the application on account of being purchasers of part of the estate property. After a protracted period of time the application was eventually listed for hearing which effectively commenced on 23rd March 2021 when this court directed that the hearing proceeds by way of affidavit evidence and written submissions. In that regard, written submissions were filed by the applicants/objectors as well as the second, sixth and eighth interested parties i.e. **Francis Gilbert Mwollo Bwire, Christopher Ratemo and Fabian Lubembe Imbwaga**, respectively.

[4] Having considered the application on the basis of the supporting grounds and the written submissions, it became apparent to this court that the main issue for determination was whether the subject grant was properly and lawfully obtained by the petitioner and subsequently confirmed in his favour. As pointed out hereinabove, the present application was brought belatedly at a time when the estate was already spent meaning that the petitioner as the lawful administrator had long distributed the estate and discharged his obligations as the legally appointed administrator of the estate. So, there was nothing remaining for distribution and what does not exist is incapable of being distributed.

Inasmuch as there was no valid objection to the issuance of the grant before or immediately after the issuance of the grant on 5th July 1990, the grant remained lawful and valid. However, the same position could not hold with regard to the subsequent certificate of confirmation of grant issued on 18th January 1991 and which actually authorized and validated the distribution of the estate wholly to the petitioner thereby transmitting its proprietary interest to him from the deceased.

[5] Notably, after the issuance of the grant the petitioner took out the necessary summons for confirmation of grant on the 22nd November 1990 and in the supporting affidavit he was listed among several others as a beneficiary of the estate. The two objectors were also listed as beneficiaries.

A person called Godfrey Makokha Okanga, filed an affidavit of protest to confirmation dated 4th December 1990. He followed this with an application for revocation of grant dated 8th December 1990. Ultimately, on the **18th January 1991**, the court confirmed the grant with an order that the estate property land parcel **Bukhayo/Mundika/395** be shared equally among the petitioner, the objectors and other beneficiaries.

As the first objector was then a minor, his share was to be held in trust for him by the second objector until such time that he shall attain the age of maturity (**i.e 18 years**).

[6] However, when the actual certificate of confirmation of grant was issued on the same 18th January 1991 to the petitioner as the administrator of the estate he did not distribute the property as ordered by the court. Instead, he distributed the entire estate to himself thereby disinheriting all the other rightful beneficiaries. As if that was not bad enough, the petitioner went on a selling spree of parts of the estate property to innocent purchasers who are the interested parties herein. The petitioner actually hoodwinked the interested parties which the certificate of confirmation of grant which he obtained unlawfully by false statements, non-disclosure of material facts and in total disobedience of the order of the court made on 18th January 1991. He would in the circumstances, be liable to the interested parties for damages under civil laws for reason that he sold to the interested parties property for which he had no proper and lawful title. In fact, the petitioner would also be criminally liable for fraud.

[7] It is therefore the finding of this court that although the grant was properly and lawfully obtained by the petitioner, the certificate of confirmation of grant dated 18th January 1991 was not so obtained. It is therefore declared null and void "*ab-intio*" and must invariably be and is hereby revoked forthwith. Only to that extent is the present application allowed, but taking cognizance of the interested parties proprietary interest in part of the estate property on account of the unlawful sale thereof by the petitioner/respondent who apparently kept off these proceedings together with some of the interested parties who may not have been personally served with the present application as ordered by the court on 24th May 2016, the provisions of **S.93** of the **Law of Succession Act** does offer protection to the interested parties as *bona-fide* purchases of parts of the estate property.

[8] In that regard, **S.93** of the **Act** provides that:-

“(1) A transfer of any interest in immovable or movable property made to a purchaser either before or after the commencement of this Act by a person to whom representation has been granted shall be valid, notwithstanding any subsequent revocation or variation of the grant either before or after the commencement of this Act.

(2) A transfer of immovable property by a personal representative to a purchaser shall not be invalidated by reason only that the purchaser may have notice that all the debts, liabilities, funeral and testamentary or administration expenses, duties and legacies of the deceased have not been discharged nor provided for.”

[9] In its ruling of the 24th May 2016, the importance and protective nature of the aforementioned provision of the law was underpinned by the court. This explained why final orders were not given by the court without all the interested parties being given an opportunity to be heard on their proprietary interest in the estate property. It was to that extent that the applicants/objectors were ordered to effect personal service upon the interested parties who never entered appearance and/or filed any response to the application.

It is instructive to note that the court did not give a final order for revocation of the grant despite observing that the grant should actually be revoked. This court has now put into effect the said observation, but only in so far as it relates to the impugned certificate of confirmation of grant dated 18th January 1991 and not 30th January 1991.

[10] Being *bona-fide* purchases of parts of the estate property from the petitioner as the lawful administrator of the deceased's estate by dint of the letters of grant of administration intestate issued on 5th July 1990 and the then sole beneficiary of the estate property by dint of the now revoked certificate of confirmation of grant issued on the 18th January 1991, the titles of ownership issued to each of the interested parties pursuant to sub-division of the main estate property, land parcel **No.Bukhayo/Mundika/391**, shall remain intact and do not fall for cancellation or otherwise by this court as prayed by the objectors for the main reason that S.93 of the Law of Succession Act offers protection to *bona-fide* purchasers in the event of any revocation of grant of letters of administration or certificate of confirmation of grant or both.

[10] A bona-fide purchaser is defined as follows:-

“.....a person who honestly intends to purchase the property offered for sale and does not intend to acquire it wrongly. For a purchaser to successfully rely on the bona-fide doctrine he must prove the followinghe holds a certificate of title, he purchased the property in good faith, he has no knowledge of fraud. He purchased for valuable consideration, the vendor have apparent good title, he purchased without notice of any fraud and he was not a party to any fraud.” (see, **Zebalk Ltd Vs. Nadem Eneapriess (2016) eKLR and Ketende Vs. Handus & Co. Ltd (2008) 2 EA 174**).

[11] This definition aptly applies to the interested parties in this case, more so, the second, sixth and eighth interested parties who defended their respective interest in this application.

In sum, it is hereby ordered that the certificate of confirmation of grant issued on 18th January 1991 stands revoked. A fresh certificate of confirmation of grant shall forthwith issue in terms of the orders made by the court on the 18th January 1991, with modification or variation to the effect that the parts of the estate property purchased by the interested parties from the petitioner be omitted from the new distribution as they are no longer part of the estate property available for distribution. Any damage or loss occasioned to the estate as a result of this ruling is clearly traceable to the petitioner whenever he may be living or hiding. He must therefore be called upon to account and make good the damage and loss during re-distribution of the estate and if that is not possible due to his seemingly deliberate absentism from these proceedings, then the fresh certificate of confirmation of grant shall issue in the name of the second objector, **Kelesenjia Nafula Manyuru**, surviving widow of the deceased, Cornel Okumu or Chorenelio Okumu or Cornel Okumu Onialla or **Cornel Okumu Manyuru**. **(emphasize added as that is the name appearing on the copy of the death certificate filed herein and dated the 24th September 2010 and which name should be used in the new certificate of confirmation of grant).**

Ordered accordingly.

J.R KARANJAH

J U D G E

[DATED & DELIVERED THIS 15TH DAY OF MARCH 2022]



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