



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

SUCCESSION CAUSE NO 211 OF 2015

ZABERIO MUGAMBI.....BENEFICIARY/APPLICANT

VERSUS

SIMION KIAMBI.....1ST RESPONDENT

JAMES MBAABU.....2ND RESPONDENT

RULING

The applications

1. Before the court is an application dated 22/9/2021 seeking principally an order against the 1st Respondent directing him to stop intermeddling or dealing with any part of the deceased's estate herein the same being land parcel **Nyaki/Thura/1245** pending the hearing and determination of this cause.
2. In his Supporting Affidavit, the applicant Zaverio Mugambi argues at paragraphs 4 and 5 “*that the Simion Kiambi (1st respondent herein) is the purchaser of having purchased it from my grandmother Monica Kambura Zaverio*” and “*that the respondent has never before utilized the land in question hence it is only proper for them to await the determination of the case before [they] can start utilizing.*”
3. The application is opposed and the 1st Respondent's case is that he has been in occupation and use of the land since 2010 when he purchased the same from the deceased beneficiary Monica Kambura, the sale which is acknowledged in the Chief's letter dated 7/6/2011 before the filing of the Cause and confirmed through Njuri Ncheke elders judgment of 24/6/2021. In addition, the relevant Agreement for sale of land is attached to the 1st Respondents Affidavit. The Respondent has filed a protest to the application for confirmation filed herein.
4. The applicant, however, contends that the deceased grandmother was sickly and “*constantly attended psychiatric Clinic*” and consequently did not have capacity to transact in the deceased's property. The applicant has consequently filed a protest to an application for confirmation of grant filed by the Petitioner on 11/1/2011 which is still pending. The application has not been fixed for hearing.
5. The petitioner herself, Rose Kambura, has in response to the 1st Respondent's Protest to the application for confirmation of grant taken an objection that-

“5. That I am not aware of the sale agreement execution between Monica Kambura Zaverio (now deceased) administratrix and the protestor herein; and

6. That the deceased estate is not available for sale since the same is yet to be confirmed.”

On the record

6. Although the petitioner's application dated 11/1/2021 titled Summons for Subdivision under sections 76 (e) and 71 of Law of Succession Act suggest that the matter is at the stage of confirmation of grant, there is in fact no Grant capable of being administered to distribution of the estate. The application of 11/1/2021 sought substantive prayers that:-

“1. That the Honourable Court be pleased to appoint the applicant (James Mbaabu) herein in place of Monicah Kambura Zaverio (now deceased) the Co-Administrator.

2. That upon granting prayer 1 above the Honourable Court be pleased to issue grant of Letters of Administration intestate and confirm the same to Rose Kambura Zaverio and James Mbaabu respectively in terms of the annexed Affidavit.”

7. On the record, the Minute of 9/7/2015 by the Deputy-Registrar requesting for “an order on the file granting letterS of Administration intestate to the applicant” was not granted by the Judge as the court has minuted Draft Letters of Administration form P & A 41 that “Paul Kirimi and Zakaria Mutua have not given consent.”

8. Indeed, the petitioners sought to correct this very error by the application of 11/1/2021 by the grounds (a) and (b) of the application wherein it is urged:-

(a) That the grant of Letters of Administration was issued on 9/7/2015 but the same was not signed.

(b) That the pleadings herein were drawn by parties and the petitioners omitted the names Paul Kirimi and Zakaria Mutua from the list of consenters.”

9. A Grant of Letters of Administration which is not signed by the Judge is invalid and there is, therefore, no valid Grant of Letter of Administration capable of supporting an application for confirmation as sought in the application dated 11/1/2021.

10. Moreover, even if such an unsigned Grant were to be held valid, there is a subsequent order of the Court (Majanja J.) made on 7/6/2018 upon a Notice to Show Cause issued on 2/5/2018, the court stating as follows: -

“No cause having been shown the grant herein is revoked.”

11. So as at 11/1/2021 when the petitioners filed the application entitled Summons for Substitution and seeking the appointment of “the applicant (James Mbaabu) herein in place of Monicah Kambura Zaverio (now deceased) the Co-administrator, “there was in existence no valid Grant.

12. The applicant in the Application dated 22/9/2021 for *status quo* to be maintained pending hearing of the case, one Zaverio Mugambi, is the grandson of the deceased Monica Kamburu and son of John Mwiti (deceased son of the deceased) who was brother to the applicant in the application of 11/1/2021 who sought to substitute their deceased mother as administrator.

13. Although the applicant as a grandson is in the second degree of entitlement to Letters of Administration to the estate of his deceased grandfather herein in accordance to the Schedule of Consanguinity under Section 66 of the Law of Succession Act, he has *locus standi* under Rule 49 of the P & A Rules, which empowers “a person to make an application to the court” as well as under Section 76 for revocation of Grants which empowers “any Interested Party” to seek revocation or annulment for the reasons set out in the section.

14. As a child of the deceased’s son John Mutwiri, the applicant even though he has not shown evidence of Grant of Letters of Administration to the estate of his late father (**see *Trouistik Union International v. Jane Mbeyu & Anor* [1993] eKLR**) is in his own capacity, rather than as a representative of his deceased father, entitled to approach the court because he is a second degree heir to the estate of his late grandfather. See Table of Consanguinity at p. 211 of Law of Succession Act.

15. There being no Grant capable of confirmation, the application of 11/1/2021 is, to that extent, pre-mature. The situation calls for a hearing to determine the issue of appointment of Administrator(s) and subsequently the distribution of the estate including any question of validity of the sale of any portion thereof. On balance of probability, the court accepts that the 1st Respondent has been on the land since the agreement for sale, which the applicant does not deny, but only questions deceased’s (Monica Kambura) capacity to transfer the land.

ORDERS

16. Accordingly, for the reason set out above, the court makes the following orders:-

(1) An order for ***status quo*** to be maintained on the suit property as exists at the date of this ruling.

(2) For avoidance of doubt, the order for ***status quo*** prevents any further developments of the land not existing as at the time of the ruling. The order does not affect the occupation and use of the land by the 1st Respondent pending the hearing of the case, or until further orders of the Court.

(3) The matter shall be set down for hearing of the case to determine the appointment of Administrator(s) and the distribution of the estate on a date to be fixed in consultation with the parties.

(4) Costs in the cause.

Order accordingly.

DATED AND DELIVERED THIS 31ST DAY OF JANUARY 2022.

EDWARD M. MURIITHI

JUDGE

Appearances:

M/S Otieno. C. & Co. Advocates for the Applicant.

M/S Kiogora Mugambi & Co. Advocates for the Petitioners.

M/S Ngéntu & Co. Advocates for the Respondent.