



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MIGORI
SUCCESSION CAUSE NO. 465 OF 2014
IN THE MATTER OF THE ESTATE OF JAMES RIOBA MARAMA (DECEASED)
IN THE MATTER OF SUMMONS REVOCATION OF GRANT
BETWEEN
ZAKAYO DOMINIC KOROSO.....APPLICANT
-AND-
MURIMI RIOBA MARAMA.....RESPONDENT
RULING

This matter relates to the Estate of the late James Rioba Marama who died intestate on 18/4/1990. Grant was issued to the respondent on 6/5/2015. Zakayo Dominic Koroso filed the summons dated 30/1/2020 for summons for revocation of the confirmed grant issued to the respondent dated 8/2/2016.

The applicant prayed for the following orders: -

- a. Spent.**
- b. Spent.**
- c. The Grant of Letters of Administration issued to the Respondent be revoked.**
- d. This court be pleased to order that L.R. No. Bugumbe/Mabera/187 do revert to the deceased's name Rioba Marama.**
- e. This court be pleased to cancel the name of the Respondent Murimi Rioba Marama from register L.R. No. Bugumbe/Mabera/187**
- f. This court be pleased to set aside the certificate of confirmation dated 8/2/2016 and/or the distribution of the Estate and proceed to distribute the Estate and/or issue a Grant with all beneficiaries listed (in the alternative).**
- g. This court be pleased to order that the Respondent do bear the costs of this application.**

The grounds upon which the application is premised are found in the body of the application and the supporting affidavit of Zakayo Dominic Koroso. The applicant mainly alleges that the respondent misled the court to believe that he was a beneficiary of Rioba Marama yet he is a beneficiary of James Rioba Marama; that Rioba Marama is the applicants' grandfather; that Rioba Marama was the registered owner of Bugumbe / Mabera 187; that the said Rioba Marama and James Rioba Marama are two non - related persons; that the respondent transferred the entire estate of the deceased Rioba Marama to his name leaving out the rightful beneficiaries.

The applicant pleaded the particulars of fraud against the respondent as follows: -

- i. Misrepresenting himself as a beneficiary of Rioba Marama.**
- ii. Swearing a false affidavit that James Rioba Marama and Rioba Marama are one and the same person.**
- iii. Misleading the court that James Rioba Marama and Rioba Marama are one and the same person.**
- iv. Obtaining Grant of Letters of Administration on an estate he is not a beneficiary.**
- v. Disinheriting the rightful beneficiaries of the estate of Rioba Marama.**
- vi. Transferring L.R. No. Bugumbe/Mabera 187 into his name using falsified documents.**

Directions were taken that the application be canvassed by way of written submissions. The respondent was given a chance to file his submissions three times but he did not comply.

Having considered the application and the submissions on record, the issues for determination are: -

- a. Whether the certificate of confirmation of grant issued on 8/2/2016 should be revoked.**
- b. Whether James Rioba Marama and Rioba Marama are one and the same person.**
- c. Whether the title issued in the name of Murimi Rioba Marama should be revoked.**

On the first issue, the certificate of confirmed grant in the estate of James Rioba Marama dated 8/2/2016 was issued to Murimi Rioba Marama, the respondent herein. On 28/9/2021, Learned Counsel Mr. Odera for the respondent, informed this court that his client died on 5/8/2021; that he made attempts to reach the family of his deceased client but none of the family members were willing to be substituted to take the place of the deceased in this cause. Counsel submitted that the Grant on record was useless by operation of the law. Counsel further submitted that the land in issue was mistakenly included in the succession cause. Counsel for the applicant did not rebut these submissions but instead asked this court to proceed and determine their application.

Section 76 of the Law of Succession Act provides the grounds upon which a grant may be revoked or annulled which are as follows: -

A grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by any interested party or of its own motion-

- 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 an untrue allegation of a fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently;**
- d. that the person to whom the grant was made has failed, after due notice and without reasonable cause either-**
 - (i) to apply for confirmation of the grant within one year from the date thereof, or such longer period as the court order or allow; or**
 - (ii) to proceed diligently with the administration of the estate; or**
 - (iii) to produce to the court, within the time prescribed, any such inventory or account of administration as is required by the provisions of paragraphs (e) and (g) of section 83 or has produced any such inventory or account which is false in any material particular; or**
- e. that the grant has become useless and inoperative through subsequent circumstances. (emphasis)**

Section 76 of the Law of Succession Act presents circumstances in which the court on its own motion or upon application, can revoke or annul a grant. The first circumstance is where the proceedings to obtain the grant were defective in substance such as where the person who obtained the grant was not qualified to be appointed as a representative of the estate; the second circumstance is where the grant was obtained fraudulently through concealment of material facts to the court which would have made it reach a different decision or whether the grant was obtained through untrue allegation notwithstanding that it was made in ignorance or inadvertently; the third circumstance is where the person to whom the grant was issued fails to apply for confirmation within a year thereof, has failed to administer the estate diligently and/or has failed to make a good account of the estate as directed by the court. The final circumstance is when the grant becomes useless and inoperative through circumstances such as death of the sole administrator, when they become adjudged bankrupt and/or they become of unsound mind.

In this instant case, the sole administrator of the estate of the deceased allegedly died on 5/8/2021. This fact has not been rebutted by the

applicant. In as much as there is no death certificate that has been produced in court, the counsel confirmed that fact and the inability of Counsel to proceed with this matter due to lack of instructions is telling. On that ground alone, the certificate of confirmation issued in the estate of James Rioba Marama to Murimi Rioba dated 8/2/2016 became useless and inoperative by virtue of Section 76 (e) of the Law of Succession Act.

On the identities of James Rioba Marama and Rioba Marama, the applicant submitted that the two are different persons; that if the said persons were one and the same person, then the respondent and applicant would be relatives but they are in no way related. The applicant contended that he is the beneficiary of the estate of Rioba Marama his grandfather; that James Rioba Marama (Deceased herein) was a brother to his grandfather. The estate in question belonged to Rioba Marama and not James Rioba Marama.

It was submitted that the respondent swore a false affidavit and misled the court in finding that he was a beneficiary of the estate of the deceased and subsequently transferred L.R. NO. Bugumbe/Mabera/187 to his name. The applicant asked the court to cancel the fraudulent title issued in the name of the respondent and revert it back to the original owner.

In support of the allegations that James Rioba Marama and Rioba Marama are not one and the same person, the applicant annexed to his supporting affidavit a letter from the Assistant chief of Ngisuru Sub Location, Mabera Division dated 22/6/2016 marked "ZDK-1". The letter listed the beneficiaries of Rioba Marama (Deceased) as:-

- a. **Marama Rioba Marama**
- b. **Rioba Nyamohanga Rioba**
- c. **Jacob Koroso Rioba**
- d. **Samson Rioba Marama**

There is another letter from the chief dated 22/6/2016 which stated as follows:-

"Rioba Marama No. 187 is a resident of Tagare Location and Murimi Rioba Marama No. 202 is a resident of Moheto sub-location Bugumbe West Location and are no longer related. Note that the distance apart of the two places is approximately 2 kilometers."

I have also considered the letter from the chief dated 25/4/2014 which the respondent used to file for grant of letters of administration intestate. The letter bears the stamp of Moheto sub-location. The certificate of death dated 10/12/2012 indicates that the said James Rioba Marama was a resident of Moheto Sub - location. The certificate of official search shows that the suit land belongs to Rioba Marama and not James Rioba Marama as was sworn by the respondent in his affidavit dated 29/9/2015 (**annexure ZDK-2**).

Indeed, if at all the persons by the name of Rioba Marama and James Rioba Marama hail from two different localities being Tagare Location and Moheto sub-location in Bugumbe Location respectively, then the applicant and the respondent are in no way the same person. Even if the deceased persons were related, it does not necessarily mean that the beneficiaries in their respective estates are one and the same. It is this court's finding that the said James Rioba Marama and Rioba Marama are not one and the same person.

From the foregone, it is evident that the certificate of confirmation of grant dated 8/2/2016 was fraudulently obtained by the respondent and the same stands revoked and/or annulled.

Upon confirmation of the grant, the title of the suit property was registered in the name of the respondent Murimi Rioba Murimi. This is evidenced by the certificate of official search dated 30/12/2019 which shows that the land was transferred to the respondent on 17/9/2015 (**Annexure ZDK-5**).

Having reached the finding that the confirmed grant dated 8/2/2016 was obtained fraudulently, it goes without saying that the title issued on 17/9/2015 was irregularly issued to the respondent and must be revoked. The title should revert back to the name of the original owner being Rioba Marama.

In the end, I allow the for summons for revocation of grant dated 30/1/2020 and make the following orders: -

- a. **The Certificate of Confirmed Grant dated 8/2/2016 be and is hereby revoked and/or annulled.**
- b. **That L.R. No. BUGUMBE/MABERA/187 reverts to the deceased's name, RIOBA MARAMA.**
- c. **That the name of MURIMI RIOBA MARAMA be cancelled from the register of L.R. NO. BUGUMBE/MABERA/187.**
- d. **The beneficiaries of RIOBA MARAMA (Deceased) are at liberty to commence proper succession proceedings.**
- e. **There shall be no orders as to costs.**

DATED, DELIVERED AND SIGNED AT MIGORI THIS 26TH DAY OF APRIL, 2022

R. WENDOH

JUDGE

Ruling delivered in the presence of

Mr. Singei for the Applicant.

Mr. Odero for the Respondent.

Evelyn Nyauke Court Assistant.