



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

SUCCESSION CAUSE NO. 639 OF 2011

IN THE MATTER OF THE ESTATE OF KABURUKI KIRUJA alias KABURUKI M'KIRUJA (DECEASED)

M'ANAMPIU KABURUKI.....PETITIONER/APPLICANT

VERSUS

GERALD KINYURU KABURUKI.....APPLICANT/OBJECTOR

RULING

1. The grant of letters of administration with respect to the deceased's estate was first confirmed on 5th February 2013. It was then rectified on 27th May 2014 and subsequently rectified on 3rd July 2019 for purposes of correcting the acreage. Upon this rectification, it turned out that the Objector had been left out and this led to a subsequent rectification as espoused in the Court's Ruling delivered on 30th January 2020.

2. Being dissatisfied with this Ruling, the Objector has once again brought an application by the notice of motion dated 11th January 2021 seeking revocation of grant issued on 30th January 2021 and to have the Court appoint another administrator for the estate of the deceased. It also seeks for a review of the Ruling dated 30th January 2020.

3. The application is premised on the grounds on the face of it and also on the Objector's supporting affidavit. The Objector urges that the deceased's estate, land parcel number Abothuguchi/Kariene/1617 was not distributed amongst the beneficiaries as agreed; That the administrator of the estate failed or refused to rectify the grant especially on the mode of distribution and as such, has failed on his duties as administrator; That the administrator has secretly sought the services of a private surveyor who surveyed the land without involving the other beneficiaries and placed beacons only on the piece of land the administrator claims is his thereby interfering with the existing boundaries; That the administrator has been very violent towards the Objector's family which has resulted in a criminal case with the administrator; That the administrator is not fit to administer the estate of the deceased since he has failed to diligently complete the process of administration and as a result, the matter has taken ages in Court due to the divisions and disagreements caused by the administrator.

4. He urges further that land parcel number Abothuguchi/Kariene/1617 was erroneously indicated as land parcel number Abothuguchi/Kariene/2617 and he urges that the same measures 3.15 Ha and should therefore be distributed equally amongst the three beneficiaries, with each getting 1.05 Ha.

Determination

5. The question arising in this application is on whether or not to revoke the confirmed grant issued on 30th January 2020. The burden is on the Objector to prove that there is reason good enough to revoke the grant.

6. The law providing for revocation grants is Section 76 of the Law of Succession Act, Cap 160 of the Laws of Kenya. It provides as follows:

76. Revocation or annulment of grant

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.

7. This Court has considered the grounds upon which the application is premised. It is claimed that the administrator has failed to administer the estate diligently and has hired his private surveyors without involving the other beneficiaries and is in the process interfering with existing boundaries. The administrator, who is the Petitioner did not respond to the application despite service.

8. He also urges that the Court should order for equal distribution of the land parcel Abothuguchi/Kariene/1617 and that the grant needs to be rectified as there was an error in the grant confirmed on 30th January 2020 which identified the property as Abothuguchi/Kariene/2617 instead of Abothuguchi/Kariene/1617.

9. With respect to the error in description of the property, this Court observes that there was indeed an error. The property to be distributed was Abothuguchi/Kariene/1617 but was erroneously described as Abothuguchi/Kariene/2617. The search records and all other references in the matter indicate that the property is the former and not the latter. This was indeed an error on the face of the record and calls for rectification of the grant.

10. With respect to the allegation that the property should be distributed equally amongst the three beneficiaries with each getting an equal share of 1.05 Ha, this Court finds that this is not justified. This Court has perused the ruling of the Court of 30th January 2020 which gave a just explanation as to why the property was to be distributed as it was in the following terms: -

“The estate had two properties, Abothuguchi/Kariene/2617 and Abothuguchi/Kariene/970. The latter property was distributed to the petitioner and the objector equally each of them getting 0.537 acres. Angelo Kaburuki did not benefit from the said property. Obviously, he cannot get an equal share in Abothuguchi/Kariene/2617 as the other two. He must be compensated for that portion they got in the other property if the equality principle set out in Section 38 of the Law of Succession Act is to apply.”

11. This was the basis for the mode of distribution in the grant of 30th January 2020. This Court must abhor the Objector for failing to disclose in his application that he already benefited from another parcel of land and for actually attempting to mislead the Court into giving him more than he is rightfully entitled to. It is a cardinal principle of equity that whomsoever comes to equity must come with clean hands. This concealment of material fact tells a lot about the truthfulness of the Objector.

12. This Court finds that the circumstances of the case and considering that the Court did not hear representations from all parties, the matter does not call for substitution of the administrator or disturbance of the mode of distribution as had been previously ordered. In accordance with the duties of a personal representative as per Section 83 of the Law of Succession Act, the Court will however order for the said administrator to complete the administration of the estate in respect of all matters other than continuing trusts and to produce to the court a full and accurate account of the completed administration.

13. In the end, this Court makes the following orders: -

i. The grant issued herein on 30th January 2020 be rectified to read the Abothuguchi/Kariene/1617 instead of Abothuguchi/Kariene/2617.

ii. The mode of distribution will remain undisturbed.

iii. The Administrator of the estate of the deceased is hereby ordered to complete the administration of the estate in respect of all matters and to produce to the court a full and accurate account of the completed administration within six (6) months from the date of this Ruling.

iv. There shall be no order as to costs.

Order accordingly.

DATED AND DELIVERED ON THIS 29TH DAY OF JULY, 2021.

EDWARD M. MURIITHI

JUDGE

APPEARANCES:

M/S D. M. Nyamu & Co. Advocates for the Objector/Applicant

M'Anampiu Kaburuki the Petitioner/Respondent in person.