



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

SUCCESSION CAUSE NO. 74 of 2013

IN THE MATTER OF THE ESTATE OF JORAM LUKOYE ANEKHA (DECEASED)

BETWEEN:

JOSEPHAT INGALULAH JORAMPETITION/APPLICANT

AND

CAROLYNE AWINJA OKOوبا CITOR/RESPONDENT

RULING

1. The Court has before it a Summons for Revocation of a Certificate of Confirmed Grant. The Application is brought under Section 47 of the Law of Succession Act & Rule 73 of the Probate and Administration Rules. The Applicant Josephat Ingalulah Joram is the only child of the Deceased to whose Estate this application relates.

2. The Applicant seeks the following Orders:

“1. That the Honourable court may be pleased to set aside its orders made herein on 13.12.2016 confirming the grant

2. THAT the certificate of confirmation of grant issued pursuant to the said confirmation be cancelled

3. THAT the **Citation Cause No. 363 of 2013** in this court be closed forthwith and the petitioner/applicant allowed to carry on confirmation proceedings in **Kakamega High Court Succession Cause No. 74 Of 2013**

4. THAT the costs of this application be provided for.

3. The Application is said to be grounded on the nature of the case and the Affidavit of Josephat Ingalulah Joram and in particular that:

“a. *The citor/respondent filed citation cause No’ 363 of 2014, merged or subsumed the petitioner/applicant’s actual succession cause No. 74 of 2013...*”

4. From the foregoing it is clear that there are two files incorporated into one file cover and that over time orders have been made relating to the matters have been made interchangeably, notwithstanding there does not appear to have been any order made consolidating the two files. The Applicant’s position is that as a consequence he has suffered a substantive injustice. The Respondent/Citor’s position is that the approach taken is a mere technicality and should be glossed over and adopted by this Court.

5. The Answer to that issue lies in the nature of the two files. The first file was commenced by a succession petition. It was properly a succession file, in the expectation of the Petitioner due to be heard to its ultimate conclusion. That is a legitimate expectation. The Petition was dated 5th February 2013 and was filed on the same day. When it was filed in the High Court it was given a number namely **Succession Cause No. 74 of 2013**. It records that the Deceased died on 12th February 1986 and was survived by a son, JOSEPHAT INGALULA JORUM. He was identified as a son of the Deceased by the Chief. There was a single asset listed namely a parcel of land comprising 9 acres namely BUTSOTSO/SHIBEYE/415 for which a certificate was issued on 15th October 1984.

6. Within the Succession File, the fee was paid and the Petition was advertised by a Gazette Notice dated 31st May 2013, published on 21st June 2013. Thereafter the Letters of Administration were issued on 16th October 2013.

7. Meanwhile on the 29th of May 2013, a Carolyn Awinja Okooba filed a “*Citation to Accept or Resuse Letters of Administration Intestate*”

(sic). In it she claimed that she “has an interest in the estate of the Deceased by virtue of being a purchaser and has occupied part of the land better known as Butotso/Shibeye/415 and registered in the name of the Deceased.” That Application was given a Succession File number being **Succession Cause No 363 of 2013**. The Citation appears to then have been placed on top of the original succession cause and a new file cover placed over the original file. The Citor comes before the Court as a creditor of the Estate. The Citor, in her Affidavit in Support she makes several statements of fact as she sees it, firstly, at paragraph 2, she states that she “bought land measuring 1 ¼ acres **from the** deceased JORAM LUKOYE ANEKHA on 23rd December 2011....” According to death certificate Serial No. 600677 the Deceased passed away on 12th February 1986 at the age of 106 years. Clearly that statement is untrue. Secondly, she states that she “approached the eldest son of the late Joram Lukoye Anekha with a view to instituting succession proceedings In vain. She states again that her agreement was with the Deceased. Thirdly, she claimed to have been in possession of the land immediately after the sale.

8. The Court heard the Citation on 17th November 2014 for Directions and then on 1st April 2014. By 17th November 2013, the Court from its own proceedings would have known (a) the letters of administration had been applied for and (b) that they had been issued and signed by Hon Mr Justice Said Chitembwe. If not, a search should have been made which would have revealed the gazette notice and the application. Nevertheless, the Court directed the Citee to file a Replying Affidavit. The Citee says he was not aware that his Petition had resulted in the issuing of letters of administration because the file had disappeared.

9. In his Replying Affidavit the Petitioner/Citee stated, that the Citation was brought in bad faith and was frivolous and ought to be dismissed with costs. He confirmed that he was the one who “sold” the land and the money was received from a Zephania Samwel Okoba. The Citee also stated that the Citor carried out a sub-division of the land known as L.P. No. BUTSOTSO/SHIBEYE/415 without his consent and or knowledge.

10. According to the proceedings, the Citation came before the then Resident Judge, Hon Lady Justice Sitati. The Learned Judge was informed by the Advocate acting for the Citor “that the Citee has filed **Succession Cause No. 74 of 2013**”. That statement of itself should have been enough to render the citation redundant. However, the Advocate also informed the Court that the correct Succession file was **Succession Cause No. 74 of 2013** and that is the file in which the grant should be issued. In fact, by that date the letters of administration had already been issued. The Citee also confirmed to the Court that he had filed a succession cause. The DR was directed to avail the file to the Court which was done later the same day. Again, at that point it seemed that the Citation was superseded by events. That was accepted by Counsel for the Citor as he asked the Court to direct the Administrator to file summons for confirmation. That was to be done in **Succession Cause 74 of 2013**.

11. On 17th November 2014, the Learned Judge Ordered (inter alia) that: (1) the Citee, as Petitioner in **Succession Cause 74 of 2013** shall file and serve the Summons for Confirmation of grant within 30 days from today. And (2) the Citor is at liberty to file affidavit of protest if same is necessary within 15 days of service. The Matter came before the Court again on 27th July 2015. On that day, it seems that again it was the Citation and not the substantive Succession Cause that was placed before the Court.

12. The Petitioner/Citee did eventually file Summons for Confirmation of Grant it is dated 26th July 2017 but the date of filing appears to be 3rd October 2017. He did so in the main succession file. In that Summons, he said that the Estate should be divided between Josephat Ingalulah Joram (7.0 acres) and Priscilla Alice Nandwa (2.0 acres). There had been no prior mention of a Priscilla Alice Nandwa and her connection to the Deceased is unknown. In the meantime the Advocate for the Citor (Messrs C. O. Samba & Co), within the citation matter, filed summons for confirmation of grant where they described their client as “objector” yet there was no objection before the Court. That Summons was filed in **Cause No 363 of 2013** and continued to be heard. On 19th May 2017, in **Succession Cause No 363 of 2013**. That Summons asked the Court to divide Butotso/Shibeye/415 between Carolyn Awinja Okooba – 1.25 acres and Josephat Ingalulah Joram – 7.75 acres. The Summons was filed on 22nd April 2017. On 19th May 2017, a grant was confirmed. The Administrator asserts that the matter was not properly before the Court on that date. The Certificate of Confirmation of Grant was issued in **Succession Cause No 363 of 2013**. The Grant (Letters of Administration) which were confirmed were said to be dated 13th December 2016. The Certificate was signed by Hon Mr Justice Njagi and the distribution was exactly as prayed by the Citor/ Objector. The Petitioner/Citee’s name was recorded incorrectly and Messrs Samba & Co requested correction. The Proceedings do not show where the issues raised, in particular whether there was a valid enforceable sale and between which parties does not appear to have been resolved.

13. The Applicant is asking the Court to revoke that grant for the reasons set out in the Summons. The Petitioner/Applicant argues that he will suffer greatly because the Respondent shall have gained specific performance of a contract of sale from the back door without the concurrence of the Petitioner/Applicant when the Respondent has failed to settle the full purchase price and has mistreated the Applicant. The Respondent has filed her Replying Affidavit to which she exhibits two sale agreements she says she entered into. She changes her story to say that it was the Applicant from whom she purchased the land because she knew he was the only child of the deceased.

14. In relation to whether there was a completed sale and transfer of possession, the Respondent states (at paragraph 18) that “*the Applicants stands to suffer no any prejudice as I am equally entitled to a portion of 1.25 acres from the estate of the deceased despite the mere fact that the Letters of Administration were issued to the Applicant in Succession Cause No. 74 of 2013 and confirmed in a different cause that is Kakamega Succession Cause No. 363 of 2013 and that in any event the said Certificate of Confirmation of Grant was made to the Applicant and not to me.*”. She also states that her advocates advised her that **Article 159(2)(d)** of the **CoK** gives the Court “an inherent power to overlook the above technicality and make such orders as may be necessary for the ends of justice to meet and that will be by dismissing the Summons”. In respect to whether there was a completed sale she said she did not take possession and appropriate the sugar cane belonging to the Administrator. She says he sold his cane and she is yet to take possession. That is a contradiction of her affidavit in support of the citation where she says at paragraph 7 “**THAT I have been in actual use and possession of the portion of land I had purchased from the deceased from 2012 to date.**”.

15. From the above it is clear that there was a Citation before the Court in this file. It is also clear that there were no grounds upon which the citation could stand because a Petition had been filed and prepared for gazette. In the circumstances, the Citation should have been dismissed on that date and no further steps taken therein – as recognized by Hon Lady Justice Sitati when she said the matter should proceed in file 74. What then transpired can only be described as a travesty. The Court eventually went on to confirm a grant (dated 13th December

2016), which in fact never existed. The grant was dated 16th October 2013.

16. The only grant that was capable of being confirmed was the grant was the Letters of Administration dated 16th October 2013. That was in file 74 and at no point after that was the Summons for confirmation heard. Therefore, this Court has no option by to revoke and/or cancel and/or reverse the Certificate of Confirmation of Grant dated 19th May 2017 and the distribution thereunder.

17. In relation whether there was a completed sale which is capable of being enforced by specific performance, the answer must be a resounding no. Despite the Citor's false statements in relation to the life span of the Deceased it is clear to this Court that any transactions that took place did so after the death of the Deceased and without the benefit of a confirmed grant. Therefore, such acts would amount to inter meddling under **Section 45** of the **Law of Succession Act**. The Applicant did not have good title and could not pass any title whatsoever onto the Citor/Respondent. The Citor was a Creditor of the Petitioner and not the Deceased. Any cause of action she has must be against him personally and not the Estate.

18. It is therefore Ordered and directed that:

(1) The Certificate of Confirmation of Grant issued on 19th May 2017 be and is hereby revoked

(2) Any action taken in reliance on that Certificate are cancelled and/or reversed

(3) The Citation dated 28th May 2013 is dismissed with costs. The Citor will be liable for all costs incurred by the Petitioner from 17th November 2014 onwards.

(4) **Succession Cause No 363 of 2013** shall be closed and any steps taken in relation to this Estate will be taken in **Succession Cause No 74 of 2013**.

(5) The Administrator/Citee shall file a summons for confirmation of grant for the Estate within 30 days. Such summons shall be supported by an affidavit which sets out clearly all the members of the family of the Deceased who survived him. Further, he shall set out clearly all the attempts he made to sell parts of the Estate, in particular prior to the issue of the Letters of Administration and such monies as were received, and from whom.

(6) To that extent the Application is allowed. Respondent to pay the Applicant's costs of the Application.

(7) All monies that have been received by the Applicant shall be paid into Court.

Dated 26th July 2021.

Order accordingly,

FARAH S.M. AMIN

JUDGE

Delivered dated and signed on this the 27th day of July 2021 at Kakamega on line and in Open Court

In the Presence of:

Court Assistant: Clement Okoit