

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

SUCCESSION CAUSE NO. 344 OF 2010

IN THE MATTER OF THE ESTATE OF MAKOKHA ELIMA MAFWABI (DECEASED)

RULING

1. The application for determination reads the summons for revocation of grant dated 26th October 2020. It seeks review of the orders dated 29th March 2017, revocation of the certificate of confirmation of grant and of the grant itself, and appointment of the applicants, Virginia Makokha Barasa and Julius Wawire Makokha, as administrators, who are widow and son of the deceased, respectively.
2. The principal complaint appears to be with the confirmation orders. The son avers that one of the assets distributed in that confirmation process did not belong to the estate, but to him. That is to say East Wanga/Malaha/47. He says it was registered in his name on 21st June 1999, prior to the demise of the deceased on 5th October 2003. He complains that he was not involved in the process of obtaining the grant and of confirming it. He accuses the administratrix of misleading the court into getting it to distribute an asset that did not belong to the estate. He has attached a green card for East Wanga/Malaha/47, which shows that the property was transferred to his name on 21st June 1999 as a gift.
3. The administratrix responded to the application, and dwelt at length with the process she went through to obtain the grant and to involve everyone in the process. On East Wanga/Malaha/47, she avers that the title had been obtained fraudulently, and that there are pending criminal proceedings in a Mumias court in Mumias SPMCCRC No. 1139 of 2019, where the son stood charged with offences relating to how he obtained the registration. A copy of the charge sheet has not been displayed, and so I cannot tell the nature of the charges from the typed proceedings. The case is ongoing, and the lands officers are yet to testify.
4. The application is principally hinged on the ownership of East Wanga/Malaha/47. That issue is before the criminal court in Mumias. I cannot, therefore, venture to pronounce one way or the other, whether the son is the rightful proprietor of the subject property. Determination of that issue should await the outcome of the criminal proceedings. The entire application is built around that issue, and it would be unhelpful to attempt to resolve the other issues before the criminal proceedings are concluded.
5. The application dated 26th October 2020, shall, accordingly, be held in abeyance until after the criminal matter is determined. The parties shall move the court appropriately once that happens. It is so ordered.

**DELIVERED, DATED AND SIGNED IN OPEN COURT AT KAKAMEGA THIS6thDAY OF
.....AUGUST.....2021**

W. MUSYOKA

JUDGE