



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

(Coram: Odunga, J)

SUCC CAUSE NO. 210 OF 2011

IN THE MATTER OF THE ESTATE OF TABITHA NDINDA MUNYAO -DECEASED

PATRICK NDUVA MUNYAO.....PETITIONER

VERSUS

BONIFACE MUASYA MUNYAO.....OBJECTOR

-AND-

STEPHEN MUSA MUNYAO.....1ST PROTESTOR/APPLICANT

PHILIP MUTISO MUNYAO.....2ND PROTESTOR/APPLICANT

CHRISTINE MALIA MWATU alias

MARY KEKE MUNYAO.....3RD PROTESTOR/APPLICANT

PETER MUIA MUNYAO.....4TH PROTESTOR/APPLICANT

MATHEW MUTHUSI MUMO.....5TH PROTESTOR/APPLICANT

RULING

1. By Summons dated 12th March, 2019, the Objector/Applicant sought the setting aside of the prohibition order made on 11th February, 2013 on Land Parcel No. Mavoko Town/Block 3/2305 as well as the order made the same day nullifying and/or revoking the letters of administration issued by this court on 10th November, 2011 and any subsequent orders thereto.

2. According to the objector, the deceased herein was his mother while the petitioner is his brother to whom letters of administration were issued on 10th November, 2011. It was deposed that the estate of the deceased comprises of title No. Mavoko Town/Block 3/2305 whose title was prohibited by an order issued on 11th February, 2013 following the annulment of the grant to the petitioner which annulment was as a result of his application dated 31st January, 2013.

3. However according to the Objector, upon discussions he reached a settlement with the Petitioner and resolved the disputes raised in his application dated 31st January, 2013 leading to the agreement that the said orders made on 11th February, 2013 be set aside.

4. The application was however opposed by the Protestors based on a replying affidavit sworn by the 1st Protestor.

5. According to the deponent, the deceased who was their mother left behind the following beneficiaries:

a. Aida Kasiva Munyao-Daughter (Deceased)

b. Stephen Musa Munyao-Son

c. Philip Mutiso Munyao-Son

d. Rose Munee Munyao-Daughter (Deceased)

e. Patrick Nduva Munyao-Son

f. Bonface Muasya Munyao-Son

g. Samuel Musembi Munyao-Son

h. Mary Keke Munyao-Daughter

6. By the time of the death of their, she was the registered owner of all that parcel of land known as Mavoko Town Block 3/2305. After her death the Petitioner herein petitioned for letters of administration and forged the signatures of the rest of the beneficiaries thus fraudulently obtaining letter of administration for the estate and proceeded to illegally change the title in his name to the exclusion of all other beneficiaries with intent to disinherit them thus precipitating the dispute herein. Subsequently, the objector moved the court vide an application dated 31st January, 2013 seeking the nullification of the said grant and registration of prohibitory order against the title of Mavoko Town Block 3/2305. Pursuant thereto, the court granted temporary orders, later heard the application inter partes and issued the final orders accordingly on 11th February, 2013 which orders were registered against the title and have been in place since then.

7. According to the protestors, previously they were acting jointly with the objector before they parted ways and the orders granted served their purpose. It was disclosed that the 1st, 2nd, and the 3rd protestors are the children of the deceased in this estate while the 4th protestor is a son of **Rose Munee Munyao** –daughter of the deceased and 5th protestor is a son of **Idah Kasiva Mumo** who is also a daughter of the deceased.

8. It was the Protestors' case that they are directly affected by the lifting of the orders of 11th February, 2013 because they were preserving the estate and in any case the dispute between the beneficiaries on how the sole property of the estate should be distributed. It was averred that the petitioner and the objector have not disputed that the suit property belongs to the estate and all beneficiaries are entitled to an equal share. They were therefore apprehensive that the estate stands to be disposed of before the succession can be determined and the lifting of the orders grants the petitioner and the objector the license to do whatever they want with the estate. The Protestors therefore read mischief in the manner in which the petitioner and the objector were pushing to have the grant reinstated in absence and without consulting the other beneficiaries.

9. The Protestors averred that the petitioner and the objector have refused to attend family meetings to agree on distribution but instead have been playing hide and seek game with threats that the Protestors will not get any share of the estate hence their opposition to the lifting of the said orders.

10. The Protestors proposed that for purposes of settling the matter and because of the in-genuine character displayed by both the petitioner and the petitioner and in the interest of all parties:-

- a. **Stephen Musa Munyao** be appointed as the sole administrator.
- b. The sole property do revert to the estate to pave way for distribution.
- c. Fresh letter of administration intestate be issued.
- d. That summons for confirmation of grant be filed for purposes of distributing the estate.

11. In support of their case, the Protestors relied on the case of **Dubai Bank Kenya Limited vs. Ukamba Agricultural Institute [2017] eKLR** where it was held that:

“Therefore there are several parties claiming a right of ownership over this suit property, these rights can only be determined through full hearing of the matter. It is therefore clear to this Court that the issue herein is deeper than as deposited. It is basically, as to which of the parties has a better route of title to the suit property” Is it the Plaintiff, the Defendant, and/or the Interested Party. The setting aside of the orders of 29th June 2012, will not resolve that issue. In fact it will only aggravate the dispute.”

Determination

12. I have considered the application, the affidavits both in support of and in opposition to the application as well as the submissions filed.

13. On 11th February, 2013, this Court (**Jaden, J**) found that the application dated 31st January, 2013 aforesaid was not opposed. Having considered the same, the Learned Judge found it merited and granted the same as prayed. That application, it is agreed was seeking nullification of the grant and registration of a prohibitory order on the suit property. By granting the said order, the Court must have been satisfied that the provisions of section 76 of the **Law of Succession Act** had been satisfied. Section 76(a), (b) and (c) of the **Law of Succession Act** provides as hereunder:

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;

14. It is therefore clear that the Court has the power, even on own motion where the provisions of the aforesaid section have been fulfilled to revoke or nullify a grant. In this case, the Court having been satisfied that the said conditions were satisfied, an order reinstating the same grant can only be made if the Court is satisfied that the circumstances prevailing are no longer an impediment to the issuance of the said grant. In this case, having considered the material placed before me, I am not satisfied that that is the position. Just like in **Dubai Bank Kenya Limited vs. Ukamba Agricultural Institute [2017] eKLR**, I find that apart from the Petitioner and the Objector, there are other parties who claim interest in the estate of the deceased and their interests are yet to be determined. Therefore, the setting aside of the orders of 11th February, 2013, will not resolve the issues in dispute but will only aggravate the dispute.

15. Consequently, I decline to grant the application dated 12th March, 2019 which I hereby dismiss but with no order as to costs. As for the orders sought by the Protestors, let them make a proper application as prescribed by the law for consideration should they be minded so to do.

16. It is so ordered.

Read, signed and delivered in open Court at Machakos this 22nd day of October, 2020.

G V ODUNGA

JUDGE

Delivered in the presence of:

Miss Mwau for the Protestor

CA Geoffrey