REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

SUCCESSION CAUSE NO.1079 OF 2011

IN THE MATTER OF THE ESTATE OF GICHU S/O MWENJERI (DECEASED)

AND

JANE WANJIRA KIBIRA.....PETITIONER/RESPONDENT

VERSUS

STEPHEN MUGO GICHU.....APPLICANT/OBJECTOR

R U L I N G

On 14th October 2015 Hon. Lady Justice A. Mshila issued the grant of letters of administration to the estate of Gichu s/o Mwenjeri to Jane Wanjiku Kibera. The summons for confirmation of grant was filed and came for hearing before the same Judge on 8th September 2016. She noted that one of the beneficiaries was deceased and had not signed the consent. The Judge directed that a certificate of death be annexed and a date be fixed in the Registry.

The next hearing date was 20th September 2016 when matter came before Hon. Justice J. Ngaah.

Upon perusal of the summons for confirmation of grant of 15th August 2016 he confirmed that the certificate of death for one Mary Njeri was annexed, noted that the other beneficiaries had no objection to the confirmation of the grant as sought. He proceeded to issue orders accordingly.

Thereafter a summon for revocation of grant was filed dated 8th December 2016. On 24th May 2017 the same was before Justice Ngaah for directions. The respondent sought time to filing a Replying Affidavit. The Judge directed him to file it within 14 days. The matter was fixed for mention on 27th September 2017 for confirmation of filing of the replying affidavit. On 27th September 2017 the matter was mentioned in the Registry. Parties took the date, 29th November 2017 to confirm the filing of the said affidavit.

On 29th November 2017, Justice Ngaah was not sitting. The matter was mentioned before me. I gave directions that matter be mentioned on 19th February 2018.

On that date matter was again before me. All affidavits were confirmed to be on record. I gave directions that parties fix date in the Registry. The matter was fixed for hearing on 15th November 2018 when matter did not proceed because parties were still exchanging documents. I directed that matter be mention on 22nd November 2018 for parties to fix hearing date.

The matter was still brought before me and I fixed matter for hearing on 29th January 2019.

It is then that Mr. S. K. Njuguna raised the issue that the matter ought to proceed before Justice Ngaah because he is the one who had made the order for the confirmation of the grant, given certain directions and he was still in the station and hence he ought to hear the summon for revocation of grant.

He also submitted that Mr. C. M. King'ori ought not to be representing some parties because he had commissioned some documents and the applicant intended to call him as a witness.

Mr. C. M. King'ori did not agree. His position was that this was not a review but a summons for revocation of grant where the only issue was whether the applicant was a child of the deceased. On the 2nd issue he submitted that there was no conflict of interest to warrant him to disqualify himself from acting for the respondents. That all were delaying tactics employed by the applicant who had title to the land and was utilizing it alone and was in fact selling portions of it.

In his rejoinder Mr. Njuguna denied any knowledge that the applicant was selling any land and reiterated that the grant sought to be revoked was confirmed by a Judge still in station and he ought to be the one to hear it.

The point of contention is: Should this matter be returned to Justice Ngaah?

I have carefully considered the submissions by both counsel. It is not in dispute that Justice Ngaah heard the summons for confirmation of the grant, and granted the orders of confirmation. It is also not in dispute that it is the same grant that the applicant is seeking to revoke, and the Hon. Judge gave certain directions but when the process was over the matter ended up in my docket. Mr. Njuguna has a point. Why should I insist on proceeding with the matter yet the Judge whose order they seek to revoke is in station? In any event the matter did begin there the judge gave the initial directions on the filing of affidavits but the Registry kept sending the file to my court.

The other issue then can be canvassed before the judge.

I have no reason to do so and hence grant them their request.

Hence this file be placed before Justice Ngaah for directions on 13th March 2019

Dated, delivered and signed at Nyeri this 22nd day of February 2019.

Mumbua T. Matheka

Judge

In the presence of:-

Court Assistant: Juliet

Karweru for S. K Njuguna for Applicant

C. M King'ori for Respondent

Mumbua T. Matheka

Judge

22/2/19