



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MERU
SUCCESSION CAUSE NO. 358 OF 2011
IN THE MATTER OF THE ESTATE OF SAMUEL ITONGA
MAITAI alias ITONGA MAITAI (DECEASED)

JAMLICK MURITHI SAMUEL.....PETITIONER/RESPONDENT

VERSUS

CORDINA KIMATHI MBAE.....OBJECTOR/APPLICANT

R U L I N G

1. The deceased, **Samuel Itonga Maitai alias Itonga Maitai**, died on 6th July, 1992. **Jamlick Murithi Samuel (the Petitioner)** petitioned for letters of administration on 12th July 2011 allegedly with the consent of the other beneficiaries. The grant was issued on 4th October, 2011. Whereby the same was confirmed on 9th October, 2013.

2. On 14th December, 2017, the objector applied “*for a proper re-survey of L.R. Abogeta/L - Kithangari/617*”. She made the application on the premise that he was given a sloppy area whereas the petitioner enjoyed a fertile place. The same was replied to by the petitioner who averred that the objector had sold part of his share to 3rd parties.

3. By a ruling made on 11th October 2018, the court stated as follows: -

“I have seen the Sale Agreement between the Applicant and Ceasar Ikunda and Catherine Ikunda dated 12th July 2012. They bought 3 acres from the Applicant for Kshs. 900,000/=. It was alleged that they had already constructed a permanent house thereon. How will the property be re-surveyed now when the applicant has by his own action fundamentally changed it by introducing 3rd parties thereunto. How are we to deal with the 3rd Party whom he willingly brought to the estate of the property and now has entrenched rights.....”

4. The court dismissed that application. Pursuant thereto, the objector made yet another application dated 27th February, 2019 seeking for the revocation of the grant or in the alternative for the court to review its orders of 11th October, 2018. The application also sought that there be a resurvey of L.R. Abogeta/L-Kithangari/617 and that the resurvey be done by a surveyor agreed by the parties.

5. The applicant contended that the petition was filed secretly and that the petitioner gave land to three (3) strangers to wit; **Carolyne Kanana Mutua, Cypriano Kinoti Meme and Denis Kimathi Mwebia**. That the petitioner left out Plot No. 4 A & B Kanyakine and has transferred the same to 3rd parties. That at no time did the petitioner seek his consent and that her signature was forged.

6. The Law applicable on revocation of grant is **section 76 of the Law of Succession Act**. A grant will be revoked, inter alia, if the proceedings to obtain the grant were defective in substance; if 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; if the same 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 amongst other grounds.

7. The applicant contended that he was not informed of the petition prior to its filing. He did not state how he came to be aware of these proceedings. It should be recalled that this is not the first time that the applicant has made an application in this matter. He had made an application in December, 2017 which was dismissed on 11th October, 2018. This is however, the first time he is raising the allegation that he was never consulted when this matter was being instituted.

8. To my mind, this is but an afterthought. The record shows that, by an affidavit sworn on 24th February, 2018, the petitioner had stated that the objector was present at the Area Chief's Office when it was agreed that the petitioner proceeds to institute this Cause. That averment was never denied or challenged at that time. I reject that claim.

9. As regards the prayer for re-survey of the estate property, this was declined in the ruling made on 11th October, 2018. There are no grounds that have been set out to warrant the review of that ruling. None of the grounds for review as known were either pleaded or demonstrated to warrant a review of that ruling.

10. As for the inclusion of the alleged three strangers in the confirmation of grant, I have perused the entire record. I have noted that the alleged persons were not mentioned in the letter of introduction by the area chief. They only came to the fore in the summons for confirmation of grant.

11. The record will however, show that the parties were agreeable to the mode of distribution proposed by the petitioner. There was a consent to confirmation of grant signed by all the beneficiaries including the objector. The objector did not deny it both at the time of confirmation or when he applied for re-survey. His problem was the area which had been distributed to him which he thought was slopy. To my mind, raising the issue now is too late in the day and an afterthought. He will not be permitted to litigate by instalments.

12. Lastly, the objector has alleged that Plot Nos. 4A & B Kanyakine were left out. Firstly, that per se would not warrant the revocation of grant but rather rectification. Secondly, the objector did not offer any evidence to show that the said plots exist, that they belonged to the deceased and that the petitioner had disposed them to 3rd parties. Mere wild allegations are not enough to make the court move against a grant that has been properly obtained, confirmed and acted upon.

13. For the forgoing reasons, even though there was no opposition to the application, I find the same to be unmeritorious and I dismiss the same with costs to the petitioner.

It is so ordered.

DATED and DELIVERED at Meru this 25th day of April, 2019.

A. MABEYA

JUDGE