



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

SUCCESSION APPEAL 1 OF 2019

IN THE MATTER OF THE ESTATE OF SHAH MOHAMMED (DECEASED)

NAZIR SHAH MOHAMMED..... APPELLANT

VS

GITHUI JOHN OF GITHUI & ADVOCATE.... RESPONDENT

RULING

1. The application before court is dated 2/4/2019. The prayers sought are;

1. Spent

2. Spent

3. THAT this Honourable Court be pleased to annul the testament Will dated 19th August 2018 purportedly drawn by SHAH MOHAMED (deceased).

4. THAT the grant of probate issued to Githui John of Githui & Company Advocates as arising from the aforesaid Will be revoked and annulled.

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

2. The application is grounded upon the affidavit of Nazir Shah Mohamed and on grounds;

a) THAT the Will dated 19th August, 2017 by Shah Mohamed (deceased) is purported to having been drawn by the testator and properly executed.

b) THAT a grant of probate dated 28th September 2018 has already been issued to the executor pursuant to the Will therein.

c) THAT the aforesaid Will if fatal resolve(sic) was drawn by the testator which is denied the same was attested through coercion, undue influence and/or mistake as the testator at the time of drawing was at his death bed, incoherent in both body and mind critically ill and hence lacked the requisite capacity.

d) THAT the appointment of the executor herein raises question too as the aforesaid executor was unknown to the testator and was only introduced to the testator by some of the beneficiaries to foster, advance and propagate their own interest.

e) THAT the Will therein is further not dated on the part of the witnesses who again were introduced to the testator by one of the beneficiaries and were people not relating with the testator to warrant them being the witnesses.

f) THAT the applicant stands to suffer prejudice if the grant was confirmed as it is since the applicant had heavily invested on one of the estate assets **Nakuru Municipality Block 5/293 Zum Zum Plaza** with the authority of the testator and having the same being bequeathed to all beneficiaries equally the applicant has lost a substantial investment.

g) THAT by dint of the aforesaid reason the grant issued pursuant to the aforesaid Will is tainted with irregularity and the same

ought to be declared as not valid.

3. The application is opposed and was met by vehement points of objection on two(2) grounds;

1. That the application is irregular as it is filed by counsel not on record.

2. That the court has no jurisdiction to entertain this application as the only available avenue for the applicant is through an appeal.

4. In submission in response, counsel for the applicant urged that the application before court is about revocation and the court has power to direct its eyes on justice especially where gross injustice is likely to be on an estate (sic).

5. To begin with, the application herein is filed within an appeal already lodged by the applicant.

6. The appeal was in exercise of the right enshrined in law for a party who is dissatisfied with the finding of the Kadhi's Court to lodge an appeal in the High Court.

7. There is no provision whatsoever giving powers to the High Court to revoke a grant issued by the Kadhi's Court other than through an appeal.

8. Secondly, from the proceedings in this appeal being Succession Appeal Number 1 of 2019, the counsel on record for the appellant are M/s N.K. Muriithi & Company Advocates who took over from the erstwhile advocates on record M/s Onchweri, Ngamate & Company Advocates.

9. The current application has been lodged by M/s Raydon Mwangi & Associates Advocates. That firm of advocates has not come on record in these proceedings and the pleading filed is thus by a stranger and irregular.

10. From the foregoing, the current application has no standing in law and even assuming for a moment that it had some legal standing, the same is incompetent and irregular having been filed by a firm of advocates not properly on record.

11. The application dated 2/4/2019 is struck out with no orders as to costs.

Dated and Delivered at Nakuru this 23rd day of May, 2019.

A. K. NDUNG'U

JUDGE