



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT CHUKA

IN THE MATTER OF THE ESTATE OF THE LATE MURUNGI RUTERE (DECEASED)

MISC. SUCCESSION NO 52 OF 2018

EUSTACE MUTEGI MURUNGI.....APPLICANT

VERSUS

AGRIVINE KABURU NJOKA.....RESPONDENT

RULING

1. **AGRIVINE KABURU NJOKA** has vide summons dated 19th August 2019 moved this court for the following orders namely:-

i. That this court be pleased to re-open her case and recall her for purposes of adducing additional evidence.

ii. Costs

2. The grounds upon which this application has been brought are listed as follows:-

a) That the applicant's case in Summons for Revocation of Grant dated 13th December 2018, where she was the Respondent was heard and closed.

b) That parties were then directed to file their respective submissions and that the parties have filed their submissions.

c) That the Applicant during trial referred to a parcel of land belonging to Respondent's father- Muthaa Nkuene .

d) The Applicant stated that the Respondent and siblings were born and raised on that land.

e) That at the time of trial, the Applicant did not know the specific land reference number.

f) That a search was later conducted and she got the details of the parcel of land.

g) That it has now become necessary to re-open her case in order to provide an opportunity for her to tender the new evidence.

3. This application is supported by the Applicant's Counsel's affidavit sworn on 19th August 2019 where she has reiterated the above grounds. Winnie Matiri, the Applicant's counsel has deposed that she conducted a search at the Land's office and discovered that the land in question that was referred by the Applicant in her testimony belonged to Respondent's father and that he had it registered in the name of one of his sons Bedford Ndeke M'Thaa. A copy of the search has been exhibited to support the Applicant's claims.

4. Applicant feels that she should be given a chance to present the said evidence to enable this court make an informed determination of all the issues in the Summons for Revocation of Grant dated 13th December, 2018.

5. The Respondent through learned Counsel Mr. Njeru Ithiga has opposed the application basically on grounds that the application or the relief sought would not aid the applicant in anyway and that it will only delay the determination of this cause. He contends that the Applicant ought to have sought for and tender a search of the Registrar (commonly referred to as the Green Card) as that would in his view help the court to know how the property changed hands.

6. The Respondent asserts that this court ought to dispense justice expeditiously and that allowing this application will impede expeditious disposal of this matter and prejudice the Respondent.

7. I have considered this application and the response made. It is true that under **Rule 73 of Probate and Administration Rules** and **Section 47 of Law of Succession Act**, this court is empowered to make such orders that are expedient and those that meet the ends of justice.

8. The Applicant states that she has discovered an important piece of evidence whose specifics were not within her knowledge and reach at the time of trial. I have looked at the official search conducted on 10th July 2019 and dated the same day and though the same on the face of it has no bearing on how and where the subject matter landed into the hands of Bedford Ndege M'Thaa perhaps the applicant has an explanation that may aid her case. The Respondent is right to feel that a delay will be occasioned by re-opening the Applicant's cause and could even have the potential to render the filed submissions unuseful due to potential change of positions taken by the parties herein. However this is a court of law and parties have a right to access justice and a fair trial which includes adducing whatever evidence they opine relevant and useful to their respective cases.

It is on that basis that I am inclined to allow this application but I will give limited period or time in which the Applicant should adduce the evidence. I will also exercise my discretion and allow the Respondent file a further affidavit of evidence to rebut or challenge the new evidence to be tendered. In the premises the application dated 19th August 2019 is allowed but costs shall follow the event. As I have observed above, I will grant the Applicant 14 days to adduce the evidence through Supplementary Affidavit to respond if need arises. and 14 days to the Respondent. Thereafter this court shall give further directions on the submissions filed. In the meantime I direct the parties to take a mention date forthwith for the interest of time and justice.

Dated, signed and delivered at Chuka this 30th day of September 2019.

R.K. LIMO

JUDGE

30/9/2019

Ruling signed, dated and delivered in the open court in presence of Kijaru holding brief for Ithiga for Applicant and Respondent in person.

R.K. LIMO

JUDGE

30/9/2019