



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERICHO

MISCELLANEOUS APPLICATION NO.10 OF 2015

IN THE MATTER OF THE ESTATE OF KIPKIRUI ARAP MAINA (DECEASED)

AND

JOSEPH KIPNGENO LANGAT.....PETITIONER/RESPONDENT

AND

ALICE CHERONO MAINA.....1ST APPLICANT

JULIANA CHEPNGETICH CHERUIYOT.....2ND APPLICANT

RULING

1. This 2015 matter was sometime back fixed for dismissal for want of prosecution in 7th June 2018, but the court gave the parties and counsel another chance.

2. It is an application for revocation of grant dated 13th April 2015. The Grant of Letters of Administration was confirmed on 25th September 2014 in Sotik Principal Magistrate's Court Succession Cause No.55 of 2013.

3. The application for Revocation or Annulment of Grant was brought under section 76 of the Law of Succession Act (Cap.160) and Rules 44 (i) and 73 of the Probate and Administration Rules. It seeks the following substantive orders from this court.-

1. That the Grant confirmed on 25th September 2014 by the Principal Magistrate in Succession Cause No.55 of 2013 at Sotik court be revoked/annulled.

2. That any distribution of the estate should be done equally among the surviving children of the deceased.

4. Before this application was heard, interim orders of injunction were issued by this court restraining dealings with the subject land Kericho/Kapkatet/483.

5. The application was filed with a supporting affidavit sworn by Alice Cheron Maina, the applicant herein.

6. Counsel for the applicant Ms Bii V. K. & Company filed written submissions to the application. Mr. Nyaingiri for the respondents did not file any written submissions. Mr. Bii adopted the written submissions filed and asked for a ruling date. I have perused and considered the written submissions filed.

7. This court has jurisdiction to revoke letters of administration at any time, whether or not the grant has been confirmed. This is clearly spelt out under Section 76 of the Law of Succession Act (Cap.160). Such revocation or annulment can be an application or on the court's own motion, and for several reasons listed under that section. In particular, section 76 provides in the first paragraph as follows:-

"76. A grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides, either an application by an interested party or on 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;

(d) that the person to whom the grant was made has failed, after due notice and without reasonable cause either—

(i) to apply for confirmation of the grant within one year from the date thereof, or such longer period as the court order or allow; or

(ii) to proceed diligently with the administration of the estate; or

(iii) to produce to the court, within the time prescribed, any such inventory or account of administration as is required by the provisions of paragraphs (e) and (g) of section 83 or has produced any such inventory or account which is false in any material particular; or

(e) that the grant has become useless and inoperative through subsequent circumstances..”

8. Though the application has been brought to this court, plain reading of the above provisions of the law do not state that the revocation or annulment of grant has to be done by the High Court. Therefore, in my view, the court which issued the grant and confirmed the same, is the court that has powers to revoke or annul the grant not another court. Since I have not been told why a grant issued and confirmed by the Magistrate’s Court, Sotik, has to be annulled in this court, I find that the application herein was filed in the wrong court and is incompetent and the same is for striking out. In my view, the applicant could only come to this court through an appeal. I strike out the application as incompetent.

8. Even if I am wrong on the above, the application cannot succeed on the merits, as the allegations made in the application that the applicant was not disclosed as a beneficiary, that no consent of beneficiaries was obtained; and that there was concealment of material facts, are not backed by any evidence. Such evidence could only be availed to this court if the entire magistrate’s court file was availed, which has not been done. Instead, only written submissions were filed to support the allegations in the application.

9. As I have already said above, the application is for striking out, and I strike out the same. The interim orders issued on the land Kericho/Kapkatet/483 are hereby vacated. The Deputy Registrar of this court will transmit to the Magistrate’s Court at Sotik the ruling to be connected to their file Succession Cause No.55 of 2013.

Dated and delivered at Kericho this 26th September, 2019

GEORGE DULU

JUDGE