



REPUBLIC OF KENYA

IN THE REPUBLIC OF KENYA AT KERICHO

SUCCESSION CAUSE NO.11 OF 2007

IN THE MATTER OF THE ESTATE OF MUSEE ARAP MOSONIK (DECEASED)

AND

IN THE MATTER OF AN APPLICATION BY:

PAUL LANGAT.....APPLICANT/OBJECTOR

AND

RUTH CHEPKOSGEI KEINO.....1ST PETITIONER/RESPONDENT

SIMION KIPNGETICH KOSKE.....2ND PETITIONER/RESPONDENT

RULING

1. This is an amended application for revocation or annulment of grant dated 20th September 2018, brought by Paul Langat under section 47 and 76 (d) of the Law of succession Act (Cap.160), and Rule 44 (1) and (2) of the Probate and Administration Rules. The substantive orders sought are as follows:-

a)(spent)

b) That the Certificate of Confirmation of Grant issued herein on 19th July 2017 issued to the respondent be revoked and or annulled.

c)(spent)

2. The application is premised on the grounds that the proceedings in which the grant of letters of administration was obtained were defective in substance; that the grant was obtained fraudulently by making false statements and concealing from the court material facts; that the Petitioners did not disclose liabilities of the deceased and did not involve other beneficiaries in the Succession Case, and that the grant ought not to have been issued without notice to the objector.

3. In the supporting affidavit to the application, the applicant deponed that he was a son of the deceased Musee arap Mosonik from the 2nd house; and that he was served with mention notice for confirmation of grant just a few days before the slated date of 6th February 2018 and was thus unable to attend court; and that the consent was only signed by 7 out of 17 beneficiaries, and that the petitioners left out a liability to the estate being Ezekiel Kipkorir Rotich who was in occupation of the parcel LR. No.Kericho/Kipchorian/Lelu Block 8 (Songonyet)/153 since the year 2001 – when the deceased put him in possession. In the said affidavit, the applicant also made a proposed mode of distribution of the estate. He annexed an affidavit sworn on 7th September 2018 by Ezekiel Kipkorir Rotich.

4. In response to the application, Ruth Chepkosgei Keino one of the petitioners filed a replying affidavit sworn on 29th October 2018 in which she deponed that Mr. Orina Advocate had all along been on record for the applicant and one Simion Kipngetich Koske; that the grant dated 19th July 2017 was a rectified certificate to the original confirmed grant issued on 15/2/2017; that it was not true that liabilities were not disclosed; and that Ezekiel Kipkorir Rotich was a stranger and that if he had claim then he should have personally come to court; that after the amended confirmed grant was issued, final distribution of the estate had been done and titles issued. Several documents were annexed to the affidavit, to support the averments.

5. The application proceeded by way of filing written submissions. Counsel for the applicant Joshua Kipkemoi Mutai filed submissions on 23rd April 2019, while counsel for the respondents (petitioners) filed submissions on 20th May 2019. I have perused and considered the written submissions filed.

6. Section 76 of the Law of Succession Act (Cap.160) provides that a grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by an interested party or on its own motion on several grounds. The applicant herein has relied on defective proceedings, false statements and concealment of material facts in the present application. The relevant provisions relating to his grounds are under section 76 (a) and (b) which provide as follows:-

“76. A grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by any 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 making of a false statement or by the concealment from the court of something material in the case.

c)

d)

e)”

7. The applicant/objector has said that the grant was wrongly issued, as the proceedings were defective. The only defect he has alluded to is that only 7 out of 17 beneficiaries signed the consent for grant and confirmation. The burden was on him to show these court on a balance of probabilities that such was the position. He has neither given the names of those who did not sign the consent, nor did he state why they did not come to court with him in these objection proceedings, if indeed they have a complaint. In my view, he has not shown this court that this complaint has substance on the balance of probabilities. He has not shown that his allegation is true. That ground thus fails.

8. The second complaint is that the petitioners (respondents) were fraudulent in failing to disclose that there was an existing liability to the estate, EZEKIEL KIPKORIR ROTICH who occupied land that belonged to the estate, having been settled there by the deceased before he died. I note that he annexed an affidavit sworn by the said person in his application.

9. Again, in my view, the applicant has failed to prove on the balance of probabilities that there was such an interested person in the estate who should have been disclosed by the petitioners/respondents. The mere filing of an affidavit of that person is not enough, as that person being an interested party, should have come to court in his own name to claim his entitlement, which he has not done. As it is we do not know whether indeed that person exists, and in addition the petitioners and other beneficiaries are not able to put that person to task as to how, if at all, he came to have an interest in the estate. That unsubstantiated complaint also fails.

10. The upshot of this is that, I find that the applicant has not met the threshold in law for revocation or annulment of the confirmed grant of letters of administration herein. I dismiss the amended application of 28th September 2018. The applicant will pay the costs of the petitioners/respondents.

Dated and delivered this 23rd day of September 2019.

GEORGE DULU

JUDGE