

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MALINDI

SUCCESSION CAUSE NO. 20 OF 2009

IN THE MATTER OF THE ESTATE OF JOSEPH KAINGU LEWA

ASPOSTO BARAKA KAINGU.APPLICANT

VERSUS

SAMMY KAINGU LEWA.....RESPONDENT

RULING

[SUMMONS FOR REVOCATION OF GRANT DATED 4TH DECEMBER, 2017]

1. In his application dated 4th December, 2017, the Applicant, Asposto Baraka Kaingu prays for the revocation of the grant of letters of administration for the estate of the deceased Joseph Kaingu Lewa issued to the Respondent, Sammy Kaingu Lewa on the grounds that the Respondent is not fit to act as the administrator as he is wasting the estate; that the grant of letters of administration was obtained by deceit as the beneficiaries of the estate were never involved or informed of the process; and that the beneficiaries only learned of the existence of the grant after they realized that a purchaser was eyeing their Plot No. 305 Chembe Kibabamshe. The application is supported by an affidavit sworn by the Applicant in which he reiterates the grounds in support of the application.

2. An affidavit of service sworn on 13th December, 2017 shows that the Respondent/Administrator was served with the application on 6th December, 2017. He did not file any response and the application proceeded *ex-parte*.

3. Section 76 of the Law of Succession Act, Cap. 160 provides the grounds upon which a grant may be revoked or annulled. The grounds includes those cited by the Applicant in support of his summons for revocation of grant. The question is whether the Applicant has established that all or any of the grounds cited do indeed exist.

4. I have perused the court file and find that some documents, including the petition for grant of letters of administration, are missing from the file. I, however, note that there is a consent (Form 38) signed by the Applicant, his mother Mary Kaingu Kalewa, his sister Margaret Kaingu Lewa and his brother Harun Kaingu Lewa indicating they had no objection to the petition by the Respondent to administer the estate of the deceased. The other beneficiaries named in that consent are indicated to be minors.

5. The information in the consent tie up with the contents of the letters of the Assistant Chief of Msabaha Sub-Location dated 26th May, 2009 listing the beneficiaries of the estate of the deceased. The Respondent cannot therefore be said to have obtained the letters of administration for the estate of the deceased based on deceit or non-disclosure of relevant information. The beneficiaries gave consent to the Respondent to apply for the letters of administration.

6. The claim that the Respondent had listed another person as a beneficiary of the estate of the deceased has not been proved. Indeed the Applicant admits that the grant has not been confirmed. I also do not see how an unconfirmed grant can be used to transfer the land of the deceased as this would contravene Section 55(1) of the Law of Succession Act.

7. The evidence placed before court is not sufficient to make this court to revoke the grant made to the Respondent on 17th August, 2010. The application dated 4th December, 2017 is therefore found to be without merit and dismissed.

8. I, however, note that seven years after the grant of the letters of administration, the Respondent has not made an application for confirmation of the same. This is irregular. In order to finalize the matter, I direct the Deputy Registrar of this court to forthwith issue a notice to the Respondent directing him to apply for the confirmation of the grant issued herein within sixty (60) days from the date of the issuance of such notice failure to which the grant shall stand annulled on this court's own motion. The revocation will be based on Section 76 (e) of the Law of Succession Act, Cap. 160 as an unconfirmed grant is useless and inoperative. There is no order as to costs as regards the instant application.

Dated, signed and delivered at Malindi this 15th day of January, 2018.

W. KORIR,

JUDGE OF THE HIGH COURT