



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

SUCCESSION CAUSE NO. 272 OF 2015

IN THE MATTER OF THE ESTATE OF THOMAS MWOBODIA NKURE DECEASED

STANLEY KINOTI M'MWOBODIA.....PETITIONER/RESPONDENT

VS

ZAVERIO NDUBI.....APPLICANT

RULING

By an application dated 26th April 2017 Zaverio Ndubi through M/S B.G.Kariuki & Co Advocates filed summons pursuant to section 76 of the Law of Succession Act and Rule 44(1) of the Probate & Administration Rules seeking that the Proceedings to obtain the grant fraudulently by the making of false statements and concealment of material facts from the court and that the grant was obtained by means of Accenture allegations of an essential point of law.

The application was supported by the affidavit of Zaverio Ndubi sworn on 26th April 2017 wherein he averred that the deceased died before transferring parcels Nos. Kiirua/Naari/2301, 2302, 2303, 2304, 2305, 2306 and 2307 to his 6 sons who were to get equal shares and that the 7th parcels was to be registered in the deceased name to hold in trust for his grandchildren and daughters.

He said that his father decreed that he didn't want any cases over his land and he believed that if his father's wishes were fulfilled they would be cursed. He said that his brothers Stanley Kinoti and Adrian Gikunda Mwobobia overruled them and disinherited the deceased grandchildren and all the daughters. That the grant was obtained fraudulently by concealment of material facts from court.

He averred that the grant ought to be set aside to accommodate the grandchildren and daughters in accordance with the wishes of the deceased. The petitioner Stanley Kinoti Mwobobia filed a Replying Affidavit in response to the application and averred that petition for grant of letters of Administration was filled with the consent of all beneficiaries who signed form 37 – P&A.

He averred that he included all beneficiaries of the deceased estate without exception Stanley Kinoti M'Mwobobia also averred that all beneficiaries including the applicant herein consented to confirmation and mode of distribution. That when matter came up for confirmation, one Robert Kinyua said he was not comfortable with distribution and he was advised by the court to file objection but he never did.

That on 29th March 2017 the matter came up for confirmation of grant and since there was no objection the grant was duly confirmed.

That all the beneficiaries were in court including the applicant new appended their signatures and identity cards. He said the applicants claim cannot be discerned from application and it is not clear for whom he is litigating.

It was averred that deceased died intestate and the applicants allegations are total lies and intended to mislead the court. The Respondents also contended that the estate was being distributed to the children of the deceased and not grandchildren and the application should be dismissed.

The applicant attached certificates of official search for the parcels of land listed in his affidavit which are shown to be registered in the name of Thomas M'Mwobobia Nkure the deceased herein.

On 29th March 2017 all the children of the deceased were in court and they signed the court record against their names indicating ID Numbers to confirm they consented to the manner of distribution proposed by the Administrator in addition to the consent that had earlier on been filed for confirmation and distribution. The applicant was present and in distribution he got L.R. Kiirua/Naari/2306 in whole. The grandchildren he purports to speak on their behalf were advised by the court to file objection to manner of proposed distribution but from 29th September 2016 to 29th March 2017 they took no steps to file the said objection. On 29th March 2017 the court confirmed attendance of the beneficiaries in court and no objection was raised on that particular day. In any case the grandchildren of the deceased would only be entitled to inherit where the parents who are the nexus between them and the deceased are also deceased.

The applicant's application is therefore not merited and cannot be sustained as he is not candid in so far as he was present during confirmation with all the other beneficiaries including the daughters and sons and it can't be true that he is speaking on any anyone behalf. The application is dismissed with costs to the Respondents.

HON. A.ONG'INJO

JUDGE

RULING, DELIVERED, DATED AND SIGNED IN COURT IN 28th FEBRUARY 2018.

In presence of:

C/A: Penina

Petitioner: Mr Ayub Anampiu Advocate

Applicant: B.G.Kariuki Advocate for Applicant

Mr Muthomi Advocate holding brief.

HON. A.ONG'INJO

JUDGE