



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

SUCCESSION CAUSE NO. 122 OF 2004

In the Matter of the Estate of Ikiamba Karithu (Deceased)

HENRY M'MITHEA M'IKIAMBA.....PETITIONER

-Versus-

JOSEPH MWAMBI M'IKIAMBA.....APPLICANT

RULING

[1] I have before me Summons for Revocation or Annulment of Grant issued made on 23rd September 2010 to the Petitioner herein. The application is dated 5th May 2014 and is expressed to be brought under section 76(d) of the Law of Succession Act and rule 44(2) of the Probate and Administration Rules.

[2] The application is premised upon grounds set out in the application, the affidavit of the Applicant and the submissions filed herein. The major reason given by the Applicant is that since the grant was made on 23.9.2010, the petitioner has failed to diligently distribute the estate in accordance with the confirmed grant. Instead, the petitioner has registered the estate into his name and now intend to sell it.

[3] The Applicant filed two sets of submissions on 10th August 2016 in support of his application for revocation. But the gist in both submissions is that the estate comprises of two properties namely:

1. NJIA/BURIERU/1585; and
2. NJIA/CIAMWENDA/836

But, the second property was not included in the distribution of the estate. He blames the petitioner for the mix-up and dishonesty. He stated that the petitioner caused the confusion of the properties when he was mandated by the family to apply for rectification of grant after they realized the acreage shown in the certificate of confirmation was bigger than the ground. He now requests that court to have this property included. He also proposes how the estate should be distributed.

[4] The petitioner neither filed any reply to nor submissions on the application. However, in the affidavit sworn on 17th July 2014, albeit in support of his application for removal of inhibition, he stated that each of the beneficiaries received their respective portions of land as per the confirmation of grant. He stated further that the Applicant herein has a bigger portion of land comprised of 0.65 Ha whereas he only has 0.35 Ha. He denies any wrongdoing.

ANALYSIS AND DETERMINATION

[5] I have perused the record. The estate property identified in the petition is NJIA/BURIERU/1585. But, on 17th November 2006, the Chief of Njia Location wrote to court and stated that the deceased had two properties, namely, plot number 1585 and 836 in Njia/Burieri Adjudication Section. The question of these two properties still lingers in these proceedings; the Applicant has asked for its inclusion. It is surprising that the petitioner has alluded that the Applicant has bigger portion of land measuring 0.65 Ha and that he has only 0.35 which is NJIA/BURIERU/1585. Without any doubt, there is need for the estate property to be ascertained in this case, for it appears it could be composed of the two properties, namely;

1. NJIA/BURIERU/1585; and
2. NJIA/CIAMWENDA/836

[6] The concealment of such material fact renders the grant herein a candidate for revocation under section 76 of the Law of Succession Act. And, although the grant herein has been revoked twice, nothing in law prevents further revocation where the legal threshold is attained as in this case. Accordingly, I revoke the grant made on 23rd September 2010 to the petitioner. I also note the need to preserve the two properties and so I issue prohibition orders to be registered on both properties namely;

1. NJIA/BURIERU/1585; and
2. NJIA/CIAMWENDA/836

[7] But, to avoid any further delay, I direct parties to intimate to court within 7 days the person or persons to be appointed administrators of the estate lest I should exercise my final discretion in section 66 of the Law of Succession Act. It is so ordered.

Dated, signed and delivered in open court at Meru this 21st day of MAY 2018

.....

F. GIKONYO

JUDGE

In the presence of:

M/s. Ayatta advocate for Petitioner

Mr. Ondieki advocate for Protestor – absent

.....

F. GIKONYO

JUDGE