



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT CHUKA**

**MISC. SUCCESSION CAUSE NO. 3 OF 2017**

**IN THE MATTER OF THE ESTATE OF TITUS M'BETA M'MUTHARA-(DECEASED)**

**AND**

**DORIS KAGENDO KIRIMI.....ADMINISTRATRIX/APPLICANT**

**VERSUS**

**JACKTON MUNENE TITUS.....ADMINISTRATOR/RESPONDENT**

**R U L I N G**

1. The cause relates to the estate of the late TITUS M'BETA M'MUTHARA (deceased) who died on 20<sup>th</sup> March 2001 at Chogoria Hospital. Dorris Kagendo Kirimi and Jackton Munene Titus were appointed joint administratrix and administrators respectively on 9<sup>th</sup> May, 2017 and on 29<sup>th</sup> November 2017 this court confirmed the said grant and distributed the estate of the deceased herein as follows:

**(A) L.R. No. Karingani/Mugirirwa/149**

1. Doris Kagendo - 0.843 acres

2. Ruth Wanjiku Karuga - 0.843 acres to hold in trust for herself and her children namely:-

- Mugambi Njagi

- Christine Kawira

- Wanjiru Njagi

- Wairimu Njagi

3. Newton Muchiri

Caroline Kainyu - 0.843 acre jointly

Munene Gatakaa

4. Lucy Kageni Njiru - 0.843 acre

5. Rhoda Kaimuri

Wanja Kanyua - 0.843 acre jointly

6. Phaniel Gitonga - 0.843 acre

7. Judy Wanja Gitonga - 0.843 acre

8. Jackton Munene Mbungu - 0.843 acre

**(B) Plot No.18 M. Chuka Township**

1. Doris Kagendo
2. Ruth Wanjiku Karuga
3. Newton Muchiri
4. Caroline Kainyu
5. Munene Gatakaa Jointly
6. Lucy Kageni Njiru
7. Rhoda Kaimuri
8. Wanja Kainyu
9. Phaniel Gitonga
10. Judy Wanja Gitonga
11. Jackton Munene Mbungu

2. The administratrix has now brought an application dated 4<sup>th</sup> January, 2018 seeking to implement the above grant and has applied that the Deputy Registrar of this court do execute requisite document to effect the transmissions pursuant to the above certificate of confirmation stating that Jackton Munene Titus, the Respondent has become reluctant and unco- operative.

3. On the other hand Jackton Munene Titus has applied for revocation of grant through Summons for Revocation of Grant dated 7<sup>th</sup> May 2018 citing the following grounds namely:-

- (i) That the proceedings to obtain the grant were defective in substance.
- (ii) That the grant was obtained fraudulently.
- (iii) That there was concealment of material fact.

4. This court decided that the applications be entertained simultaneously as the determination of the latter application dated 7<sup>th</sup> May 2018 would have a direct bearing on 2<sup>nd</sup> application. I will therefore begin by looking at the said application dated 7<sup>th</sup> May, 2018 before determining the former application dated 4<sup>th</sup> January, 2018.

5. The parties in this cause did agree on 11<sup>th</sup> July, 2018 that the application dated 7<sup>th</sup> May, 2018 be canvassed through written submissions and affidavits. I gave the parties 14 days in particular the applicant 14 days to file and serve his submissions on the Respondent and the Respondent was given 14 days to respondent upon service.

6. However on 1<sup>st</sup> October, 2018 when the matter came up for mention, the applicant in the application dated 7<sup>th</sup> May, 2018 had not filed his submissions as directed. In the absence of the written submissions this court will now rely only on the filed affidavit by the applicant sworn on 7<sup>th</sup> May 2018. In that affidavit the applicant has deposed that he was not aware that the grant herein had been confirmed on 29<sup>th</sup> November, 2017 as he did not attend court that day. He has further deposed that on that date, he was invigilating exams at Kiereni Secondary School and that he was unaware that he was required to attend court. He has accused the Respondent for fraud and that he was not agreeable to the mode of distribution adopted by this court. He further says that the Respondent never approached him for a discussion prior to filing the Summons for Confirmation of Grant dated 22<sup>nd</sup> May, 2017.

7. Doris Kagendo Kirimi the Respondent in the said application dated 7<sup>th</sup> May 2018 has opposed it through a Replying Affidavit sworn on 14<sup>th</sup> June, 2018. The Respondent has deposed that the applicant has been uncooperative in this cause and that he has brought this application to defeat her application dated 4<sup>th</sup> January, 2018. She has further denied that the applicant was unaware about the Summons for Confirmation of Grant dated 22<sup>nd</sup> May, 2017 and the hearing dated on 29<sup>th</sup> November, 2017 as he was served citing the affidavit service by a process server named Miriam K. Irware.

8. The Respondent has faulted the applicant for inaction since the time they were both appointed joint administratrix and administrator respectively on 9<sup>th</sup> May, 2017. She has further deposed that the applicant should have sent a representative on 29<sup>th</sup> November, 2017 if it is true he was involved with invigilation of exams.

9. The Respondent has further deposed that the application for revocation of grant has been brought in bad faith as the applicant has not stated an alternative mode of distribution agreeable to him and has added that the mode of distribution adopted by court was equitable to all the beneficiaries/ children of the deceased. The Respondent has further deposed that the applicant intends to delay distribution of the estate so that he continues collecting rent in plot No. M.18 where he has not even accounted for what he has been collecting.

10. This court has considered the application dated 7<sup>th</sup> May, 2018 and the grounds upon which it has been brought. To begin with the first ground that there was some defect in the proceedings leading to the grant being confirmed, is that this court has noted no defect in the Summons for Revocation of Grant dated 22<sup>nd</sup> May, 2017. The applicant has also not cited any defect in the cited Summons for Revocation of Grant.

11. On the question of his non attendance to court on 29<sup>th</sup> November, 2017 when the grant was confirmed, this court has looked at the proceedings which indicate that on 13<sup>th</sup> July 2017 when the Summons for Confirmation of Grant dated 27<sup>th</sup> May 2017 came up for hearing, the applicant's counsel applied for adjournment stating that he had not seen the applicant. He also applied to cease acting citing indifference by the applicant to give him sufficient instructions. This court directed the advocate to serve the present applicant directly and appear in court on 12<sup>th</sup> October, 2017. On 12<sup>th</sup> October 2017, the applicant and his counsel appeared in court and this court duly allowed the applicant's counsel to cease acting. The applicant then requested for time to look at the proposed mode of distribution. He was directed to file a statement of account regarding the rent he has been collecting and also file protest if he was not agreeable to the proposed mode of distribution suggested by the Respondent herein. He was given 7 days to do so and the matter was fixed for 16<sup>th</sup> November, 2017 for further orders. On 16<sup>th</sup> November, 2017 the applicant was absent. He had not filed any protest or any statement of account. No reason was given to explain his absence and/or failure to file a statement of account. The matter was then fixed for confirmation on 29<sup>th</sup> November, 2017 and the administratrix directed to serve all the beneficiaries including the applicant herein. On 29<sup>th</sup> November, 2017 the applicant was again absent and no reason was given to explain his absence. This court was satisfied that all beneficiaries had been served as per the affidavit of service by a court process server sworn on 27<sup>th</sup> November, 2017 and filed in court on the same day.

12. This court therefore, given the record of proceedings highlighted above, finds that the applicant's contention that he was unaware of the filing of Summons for Confirmation of Grant dated 22<sup>nd</sup> May, 2017 is in bad faith. The applicant himself was in court on 12<sup>th</sup> October, 2017 and requested for time to look at the proposed mode of distribution. For him to later turn around and feign ignorance is in bad faith and clearly mischievous. He has not explained why he did not file any protest if he was not agreeable or statement of account showing how the proceeds from rent collected from Plot No.18 M Chuka Town from 1<sup>st</sup> January, 2017 to date.

13. This court has not been told what was fraudulent about the Summons for Confirmation of Grant dated 22<sup>nd</sup> May, 2017 or the manner in which the administratrix acted. The applicant has also not demonstrated what was concealed by the Respondent. If anything if there is a party guilty of concealment it is the applicant because he has not been transparent and has not filed a statement of account on the rent proceeds he has been collecting.

14. In the premises this court finds that the applicant has not established any ground listed on the face of his Summons for Revocation of Grant dated 7<sup>th</sup> May 2018 lacks merit and is or any ground under the provisions of **Section 76 of Law of Succession Act** (Cap 160 Laws of Kenya). The application dated 7<sup>th</sup> May 2018 is dismissed with costs to the Respondent.

15. In view of my above finding, the application dated 4<sup>th</sup> January, 2018 being an application to implement the certificate of confirmation issued on 29<sup>th</sup> November, 2017 stands allowed as the Respondent's only ground for objection was the Summons for Revocation of Grant dated 7<sup>th</sup> May 2018 which is now determined.

Apart from allowing the application dated 4<sup>th</sup> January, 2018 which I find merited under **Rule 73 of Probate and Administration Rules** and **Section 47 of Law of Succession Act**; I also direct the Respondent Jackton Munene Titus to file statement of accounts as earlier directed forthwith and in the meantime stop collecting the rent forthwith. The rent shall henceforth be collected by Doris Kagendo Kirimi until the distribution per the certificate of confirmation is finalised. In default of a statement of account, the 2<sup>nd</sup> Administrator is directed to deposit all the monies collected as rent for Plot No. 18 M Chuka Township. Money deposited in court or joint account to be operated by both the administrators This court finds merit in the application dated 4<sup>th</sup> January, 2018. The same is allowed as prayed and Respondent is liable to pay costs owing to his actions to delay and frustrate the finalization of this cause. He shall therefore pay costs for the application dated 4<sup>th</sup> January, 2018.

**Dated, signed and delivered at Chuka this 29<sup>th</sup> day of October, 2018.**

**R. K. LIMO**

**JUDGE**

**29/10/2018**

Ruling signed, dated and delivered in the open court in presence of Muthomi holding brief for Mugo for applicant and Respondent in person.

**R. K. LIMO**

**JUDGE**