



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MERU
SUCCESSION CAUSE NO. 501 OF 2013

In the Matter of the Estate of KiragaraBagiri (Deceased)

GRACE KAGWIRIA.....APPLICANT/OBJECTOR

Versus

JAPHETH MBURUGU RINGERA.....1ST RESPONDENT

JULIUS NDUBI RINGERA.....2ND RESPONDENT

RULING

Revocation of grant

[1] Before me is a Summons for Revocation of Grant dated 26th September 2016. The application is expressed to be brought under section of the Law of Succession Act and rule 73 of the Probate and Administration Rules. It is supported by the Affidavit of Judith Kagwiria who has applied on her own behalf and that of her sisters.

Directions

[2] On 26th September 2016, the court directed parties to file written submissions on the application at hand. Parties have now filed submissions which I shall consider.

Applicant's gravamen

[3] The Applicant's main quarrel is that she and the other daughters of late Ringera Kiragara Bagiri, son of deceased were disinherited of the share due to their late parent in this estate. The said share of their late father was distributed to only their brothers, sisters-in-law and mother. They claimed that a misrepresentation was made to them that their mother would receive a huge share of the estate which she would in turn transfer to the daughters. But that was not the case as it appears in the certificate of confirmation of grant.

[4] In the submissions, the Applicant stated that Charles Mugambi bought a portion of the estate property in total contravention of the law of Succession Act. She suggested that the purchaser's remedy should be against Julius Ndubi Ringera from whom he purportedly bought the land. She also submitted that L.R No Abothuguchi/Githongo/439 has been subjected to extreme intermeddling and need to be protected by the court. For those reasons, they applied for revocation of the grant issued herein on 15th December 2015.

Petitioners seems to support application

[5] After several back and forth, the Petitioners ultimately filed submissions on 24th February 2017. They seem to support the application herein, for the reason that daughters of Ringera KiragaraBagiri were excluded from inheriting their father's share in the estate. Based on this fact, they concluded that the grant herein was obtained by means of untrue allegation of fact essential in a point of law to justify the grant and should be revoked forthwith. However, they argued that distribution of Abothuguchi/Githongo/416 should not be disturbed as it was shared among the sons of the deceased. The only dispute is on the sharing of the share

Determination

[6] This application is one of revocation of grant. It must therefore satisfy the threshold provided in Section 76 of the Law of Succession Act CAP 160 of the Laws of Kenya. But, from the grounds which have been argued, the court should seek to determine whether:-

(a) The grant was obtained fraudulently by the making of a false statement or by the concealment from the court of something material to the case; or

(c) The grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently

[7] It is not in dispute that the late Ringera KiragaraBagiri was a son of the deceased. Accordingly, in law, his children- male and female alike- would take his share equally under the principle of representation enunciated in section 41 of the Law of Succession Act. But, in this cause, only male children of the late Ringera KiragaraBagiri partook of their late parent's share in the estate. That kind of discrimination of women on the basis of gender is loathed by the law- a brutal reality of the law encapsulated in article 27 of the Constitution. Courts of law have also with sufficient force reinforced the elegant provisions of the Constitution which proclaimed discrimination of women on the basis of gender to be prohibited discrimination. It is now time that wise citizenry should never depart from this wisdom of the Constitution. Applying this legal test on the facts of this case, the grant herein is tainted with lethal poison and must be cancelled. Accordingly, I revoke the grant issued on 15th day of December, 2015. As a corollary order, all title deeds if any which may have been issued pursuant to the revoked grant are hereby revoked. Abothuguchi/Githongo/439 and 416 shall revert to and be registered in the name of the deceased. In making this decision, I am aware of section 93 of the Law of Succession Act. I shall also, within 14 days appoint such persons as the court will determine to be administrators of this estate. Further directions shall follow immediately upon delivery of this ruling. It is so ordered.

Dated, signed and delivered in open court at Meru this 17th day of May 2017

F. GIKONYO

JUDGE

In the presence of:

Mr. Baithambu advocate for petitioners

Objector in person - present

F. GIKONYO

JUDGE