



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MERU**

**SUCCESSION CAUSE NO. 278 OF 2000**

**In the Matter of the Estate of M' Ibuathu M' Ilula (Deceased)**

**MARGARET CIOMAU.....APPLICANT/2<sup>ND</sup> ADMINISTRATOR**

**-VS-**

**JOEL MITHIKA.....RESPONDENT/1<sup>ST</sup> ADMINISTRATOR**

**RULING**

[1] Before me is a Notice of Motion Application dated 3<sup>rd</sup> June 2015. The said application is expressed to be brought pursuant to Section 76 CAP 160 of the Laws of Kenya. In it, the Applicant/Petitioner has sought the following orders:

- 1. That the Certificate of Confirmation of Grant be revoked because it does not reflect the ruling of Justice Isaac Lenaola on the mode of distribution and interest.**
- 2. That inhibition be issued to the parcels shown in the confirmed grant dated 19<sup>th</sup> March 2014 until the 1<sup>st</sup> prayer is properly determined.**
- 3. Costs be paid by the Respondent.**

[2] In this application it has been argued *inter alia* that one of the Administratrix Margaret Ciomau mis-directed the court as she did not indicate that her interest was only life interest after which, the property shall revert to the 2<sup>nd</sup> Administrator. It was also urged that she can't sell the said property as she is trying to do. The Applicant stated that the confirmed grant does not reflect her interest to be limited to life interest which was as a result of the misdirection to the court- this he claimed she did with an intention to defraud.

[3] Briefly the Applicant's case is that that on 27<sup>th</sup> May 2015, he was served with an order which was obtained way back on 19<sup>th</sup> March 2014 in which the 2<sup>nd</sup> Administrator was empowered to sign all the relevant documents for distribution of the estate herein; the O.C.S Maua police station was to provide security to the respondent and surveyors during subdivision; and inhibition on land parcel number Njia/Buuri Ruri 976, 2161 and 2497 was lifted. The Applicant contended that the Respondent was being used by third parties who have interest in her shares in the estate. He was of the view that the Respondent was supposed to enjoy the share of the estate for life interest and now the third parties want the Respondent to transfer her share to them.

[4] The Applicant submitted that in the year 2007 Lenaola J made a ruling stating confirming the Grant as had been prayed for except that the Respondent's interest was for life only. The Applicant relying on Section 35 of the Law of Succession Act interpreted this to mean that the life interest of the surviving spouse determines upon remarriage or death of the surviving spouse, after which the property reverts back to him. It was further submitted that Section 37 of the Law of Succession Act limits the exercise of powers by a spouse with life interest except with the consent of the children or the court. The Respondent had undisputedly approached the court but did not serve him with the said application.

[5] The Respondent argued that the court ruled that all the property of the estate should be shared equally between the 1<sup>st</sup> and the 2<sup>nd</sup> Administrator. And by that pronouncement, there was no way each would have individual share without partitioning the property and being registered thereto. She stated that she was therefore, justified to take a surveyor to partition the estate properties. According to her, the Applicant misconstrued her life interest in the estate by thinking that the property would revert to him upon her death. She denied that she had intention to sell the property awarded to her.

[6] The Respondent made further submissions that in the ruling of 31<sup>st</sup> October 2007, the court (Lenaola J as he then was) upheld and adopted the mode of distribution proposed by her. The good judge ruled that the estate to be shared equally by both the 1<sup>st</sup> and 2<sup>nd</sup> administrator with the 2<sup>nd</sup> administrator taking a life interest. Despite the court ruling, the 1<sup>st</sup> administrator did not allow the 2<sup>nd</sup> administrator to enjoy the fruits of that estate and that on 8<sup>th</sup> August 2013, the 2<sup>nd</sup> Administrator successfully applied and obtained court orders to alone sign all the necessary documents to partition her shares from that of the 1<sup>st</sup> Administrator. These latter orders provoked the instant application.

## **DETERMINATION**

[7] I have carefully considered this application and the rival submissions by the parties. Doubtless, the ruling on 31<sup>st</sup> October 2007 by Lenaola J (as he then was) confirmed the grant as per the mode of distribution proposed by the Respondent which he found to be reasonable except that the Respondent's interest in all the properties will be for life only. It appears that after much struggle to realize enjoyment of the fruits of the afore stated ruling by the court, the Respondent filed an application in court on 20<sup>th</sup> August 2016, seeking *inter alia* an order to empower her to sign all the necessary documents to administer and distribute the deceased estate as per the confirmed grant made on 31<sup>st</sup> October 2007. The said application was heard and allowed by Makau J on 19<sup>th</sup> March 2014. Contrary to assertions by the Applicant, the record shows that he was served with the application dated 8<sup>th</sup> August 2013 on 30<sup>th</sup> August 2013 at 8:00 AM at a place called Muringene in the presence of his wife. An affidavit of service to that effect was filed. Accordingly, I find the Applicant's contention that he was never served with the said application to be mere denial and an afterthought.

[8] In spite of denials by the Applicant, I have no reason to doubt the Respondent's complaints particularly that despite the court's ruling of 31<sup>st</sup> October 2007, the Applicant did not allow her to enjoy any benefits of the estate- a factor that prompted her to file the application dated 8<sup>th</sup> August 2013 so that she could alone sign all the necessary documents to partition her shares from that of the Applicant. I note with concern that Lenaola J (as he then was) made a finding that the Applicant exhibited veiled attempt to disinherit the Respondent "*because she is too old or... because she is a woman with no son but only married daughters*". Accordingly, the Respondent had the right to apply as she did for purposes of partitioning the properties into equal portions as was ordered by the court. And the orders by Makau J were issued after service of the application upon the Applicant.

[9] Based on what I have stated, the confirmed grant herein dated 19<sup>th</sup> March 2014 is not inconsistent with the ruling by Lenaola J (as he then was). The orders by Makau J are in force and were in execution of the grant herein which had been impeded by the Applicant. Such course is not foreign to our jurisdiction especially where a joint administrator is unwilling to implement the grant. In extreme cases, such failure to administer the estate in accordance with the grant and the law may lead to revocation of grant made to the offending administrator and all powers of administration will vest on the other

administrator solely, or with others if the court finds it necessary. And again in passing, and before I close, I should state that courts of law now favour to give a surviving spouse a distinct share in the estate rather than have a life interest hovering on the entire estate. I also dare say that it is time courts aligned the Law of Succession Act with the Constitution and recognize rights of a surviving spouse in the property of their marriage which hitherto is being reduced to mere entitlement of a beneficiary in the estate in the same or sometimes, in case of a widow, to a lesser proportion than the children of the surviving spouse. I am making a judicial hint which will soon find its way in the law of inheritance.

[10] Turning back to the main course, I find that the Applicant has not made out a sufficient case for Revocation of \Grant pursuant to Section 76 of the Law of Succession Act CAP 160 of the Laws of Kenya. Accordingly the Application dated 3<sup>rd</sup> June 2015 is dismissed in its entirety. This being a succession matter there will be no order as to costs. It is so ordered.

**Dated, signed and delivered in open court at Meru this 17<sup>th</sup> day of May 2017**

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**F. GIKONYO**

**JUDGE**

**In the presence of:**

Mr. Muriuki advocate for Mbarugu advocate for 2<sup>nd</sup> administrator

Mr. Murithi advocate for Kirima advocate for petitioner

Mr. Mutembei advocate for interested party.

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**F. GIKONYO**

**JUDGE**