



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

SUCCESSION CAUSE NO.457 OF 2006

**IN THE MATTER OF THE ESTATE OF THE LATE JOSIAH KIPKURUI ARAP RONO –
(DECEASED)**

RAHAB K. MUKIAMA.....APPLICANT

VERSUS

SUSAN CHERONO RONO

JOYCE CHEPKORIR RONO

CHARLES KIPKOECH KIRUI

DENIS KIMUTAI KIRUI.....RESPONDENTS

RULING

1. This ruling is in respect of a summons to set aside partial confirmation of grant dated 11th May, 2007.
2. In the said summons, Rahab K. Mukiyama (hereafter Rahab) seeks order that:
 1. That orders dated 11th May, 2007 be set aside.
 2. That costs of the summons be provided for.
3. The application is supported by Rahab's affidavit sworn of the 15th January, 2009.
4. The gist of the application is that Rahab has been sued in H. C. Elc. No.326 of 2008. The court was misled that the deceased owned L.R. No.3734/1049. It is sought that the partial confirmation be set aside.
5. In a replying affidavit with authority of other administrators, Charles Kipkoech Kirui depones that the fact that the applicant is sued in Nairobi H.C. Elc No.326 of 2008 is not a ground enough to warrant interference with the orders of court.
6. It is urged that the property belonged to the deceased. No title document is exhibited by the applicant.
7. The property has since been duly disposed off and the relevant legal documents of transfer of title duly effected and the ownership has fully passed to a purchaser for value without notice. Sale agreement and a duly executed transfer are annexed. The transfer executed shows it was presented at the land titles

registry on 28th June, 2007.

8. Directions were made that the application be disposed by way of written submissions. The applicant and the administrators' counsel have complied.

9. I have had occasion to consider this very old application going back eight (8) years ago.

10. The partial confirmation of grant was made on 11th May, 2007. Specifically the partial confirmation had been sought and was granted for purposes of disposing off LR NO.3734/1049 to settle land rent, rates and liabilities in respect of deceased's immovable assets. The balance was to be deposited into a bank account awaiting distribution of the estate.

11. The applicant's claim is that the said property did not belong to the deceased. In support of her case, she states that she has been sued over the said property.

12. Strangely, other than stating that the property did not belong to the deceased and that she is sued in respect of that property, no evidence of ownership or extent of her interest in the property is exhibited. The feeble claim to this property is confounding. A claim to a property must be based on tangible cogent evidence.

13. In the learned submission by counsel for the applicant it is asserted that the order of partial confirmation was misused to issue a title deed dated 1st August, 2006 allegedly to the administrators of the deceased. The title pre-dates the order of partial confirmation. The administrators are also accused of failure to account for the proceeds of sale.

14. Of note is that counsel for the applicant has in submissions referred to facts deponed to in a replying affidavit by the applicant sworn on 22nd July, 2008 in response to the chamber summons application dated 9th October, 2008 filed within ELC No.326 of 2008.

15. Suffice it to note that the applicant herein is not a beneficiary of the estate herein. Her claim or the claim of a company associated with her is a competing interest in land to which the estate of the deceased also laid a claim.

16. In my considered view, these competing interest in land between the applicant and the estate of the deceased ought to have been articulated in a suit against the estate by the applicant. The estate is (and was) duly represented through administrators and I fail to see any difficulty the applicant would have faced in suing.

17. I need to say a little more about the competency of the application before court and the *Locus Standi* of the applicant in bringing the summons at hand.

18. The summons is titled "***Summons to set aside partial confirmation of grant.***" It is premised on **Section 47** of the **Law of Succession Act** and **rules 49** and **73** of the probate and administration rules.

The orders sought are

1. That orders dated 11th May, 2007 be set aside.

2. That costs of the summons be provided for.

19. The orders sought to be set aside are orders partially confirming a grant.

20. Throughout the Law of Succession Act, the only provision that deals with revocation or annulment of grant (which in essence is what the applicant is seeking) is **Section 76** of the Act. **Section 47** of the Act and **Rules 49** and **73** of the **Probate and Administration rules** are thus not applicable as **Section 76** makes a clear provision for such an application that seeks to set aside (read revoke or annul) a grant.

21. I have stated earlier on that the applicant is not a beneficiary of the estate of the deceased. She has no enforceable interest in the estate of the deceased. A party seeking revocation of grant must be an interested party. The applicant's interest, I reiterate, is a competing interest in property against the estate. The application as presented is thus defective.

22. I quote with approval, Ngaah Jairus, J **In the matter of the estate of Peter Githinji (deceased)**, [2014] eKLR where he stated:

“The verbatim reproduction of the applicant's summons as drawn is meant to demonstrate, at the outset, that the grounds on the face of the summons upon which the applicant seeks to have the grant of letters of administration revoked or annulled are not the grounds set out in Section 76 of the Law of Succession Act under which the application ought to have been made. It is apparent that the purported grounds are clearly prayers for other reliefs which have supplanted what would have been the duly recognized statutory ground or grounds for nullification or annulment of grant of letters of administration.”

23. In our instant suit, the grounds raised are that the applicant lays claim to the subject property. Such a claim is not contemplated under **Section 76** of the **Law of Succession Act** and the remedy lies elsewhere.

24. As held by the court (Ngaah J) in **In the matter of the estate of Peter Githinji** (supra), the grounds upon which a grant may be revoked or annulled are statutory. They do not include a claim to ownership of land by a party. Such a party has readily available remedy (ies) elsewhere within the law.

25. A plausible explanation is given by the respondents as to why the title to the respondents (administrators) predates the order of partial confirmation. It is urged that the administrators of the estate acted to preserve the estate in good order. The title was issued in the respondents' names as administrators. This is perfectly within the powers granted to administrators under **Section 83** of the **Law of Succession Act** which provides for the duties of administrators (personal representative).

26. From the above analysis and for reasons stated, I am persuaded that the applicant's remedy lay in a proper suit/claim through the suitable jurisdiction of court. The applicant is not a beneficiary of the estate herein. Her interests are competing interests to those of the estate herein. The remedy lies in a court of competent jurisdiction seized with the jurisdiction to entertain matters affecting ownership, use and occupation of land.

27. The applicant is a stranger to the estate herein. The perfect reason why she has no business interfering with the administration of the estate herein including a complaint about accounts being rendered. The Law provides a proper mechanism through which she could articulate her claim.

28. I find and hold that the application before court is without merit. The same is dismissed with costs to the estate of Josiah Kipkurui Arap Rono.

Dated, Signed and Delivered at Nakuru this 23rd June, 2017.

A. K. NDUNG'U

JUDGE