



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KAKAMEGA
SUCCESSION CAUSE NO.757 OF 2010

IN THE MATTER OF THE ESTATE OF CHARLES LIDORO SHIONDA – DECEASED

GODWIN JUMBA SHISANYA1ST APPLICANT

LINUS MUKALO SHISANYA2ND APPLICANT

AND

FRANCIS JOASH SHIONDARESPONDENT

R U L I N G

Introduction

1. The Respondents were issued with a grant of letters of administration on the 7th June 2011 and the same was confirmed on the 5th of May 2012. Sometime in June 2013 they moved this Court by way of Chamber Summons under Rule 73 of the Probate and Administration rules seeking for orders that the caution lodged on land Title Number Kakamega Shisejери/1504 be removed by the District Land Registrar Kakamega to facilitate registration of the Administrator on the grounds that it is the applicant herein who had caused registration of the same after the death of the deceased.

2. However, the caution was removed before the application was heard and directions taken for the hearing of the present application which is dated 11th February 2014.

The Application

3. The Summons is brought under Sections 47 and 76 of the Law of the Law of Succession Act, Chapter 160 Laws of Kenya and Rule 44 of the Probate and Administration Rules. The applicants pray for the revocation of grant of letters of Administration intestate issued to the Respondent, on the 7th June 2011 and confirmed on the 7th May 2012 in respect of the estate of the deceased herein and a fresh grant be issued to them.

4. The grounds upon which the application is based are that the grant was obtained fraudulently by the making of a false statement or by the concealment from the Court or something material to the case. Further that the grant was obtained by means of untrue allegations of facts essential in point of Law to justify the grant.

5. The application is further supported by the sworn affidavit of Godwin Jumba Shisanya who states therein that the applicant's interest in these proceedings is the portion of the suit land parcel known as IDAKHO/SHISEJERI/1504 which they purchased at a value of kshs.170,000 as shown in the attached

copy of the sale agreement “GJ 5 – 3”. They claim to have been living on the above named suitland since 1987 without any hindrance even before purchasing the same. They also claim to have bought another parcel of land known as IDAKHO/SHISEJERE/1507 at a consideration of 250,000/=. The deceased herein CHARLES LIDORO was their uncle and the land in question is ancestral and family land and that the Respondent herein wants to evict them which will cause them irreparable loss. They want the grant of letters of administration revoked as they were not consulted when the respondent petitioned for the same.

Response

6. The application is opposed by the Respondent who filed a replying affidavit on the 16th September 2015. He contends that at the time of filing the succession cause all the beneficiaries were in agreement and they each got a share of the ancestral land. He denies the claim that the grant was obtained fraudulently as alleged and adds that the Applicants purchased a portion of land from one of the beneficiaries who has been provided for in the confirmed grant. He contends that there are no grounds to justify nullification or revocation of the grant and adds that if at all the applicants purchased land it was the terms of the agreement that transfer of ownership was to take effect after succession.

7. The Respondent further states that he is a stranger to the allegations in respect to land parcel number Idakho/Shisejeri/1507 and adds that the applicants are not entitled to a share of the deceased’s estate, they could not be consulted. Further that the shares for the beneficiaries have all been identified and registration has been done.

Submissions

8. The application was canvassed by way of written submissions which this Court has carefully considered. The issue for determination is whether the grant of probate issued to the respondent should be revoked or annulled on any of the grounds set out in Section 76 of the Law of Succession Act as sought by the applicant.

9. For a grant to be revoked there must be evidence that the proceedings to obtain the grant were defective in substance or that the grant was obtained fraudulently by making of false statement or by concealment of something material to the case or that the grant was obtained by means of untrue allegations of facts essential in the point of law.

Conclusion

10. In my considered view, there is no evidence that the Respondent, while presenting the Petition for Probate concealed any material facts or that he proceeded to obtain the grant fraudulently. What is clear from the record is that the applicants purchased part of the deceased’s estate from one of the beneficiaries who has now been provided for. The sale was done before succession was undertaken and as was held in the case of **Gitau & 2 others –vs- Wandai & 2 others [1989] KLR 231**, parties who enter into sale agreements before grant of representation has been obtained commit acts of to intermeddling with the affairs of the deceased. That is what happened in this case. Even the mere fact of commencing action on behalf of the estate of a deceased before obtaining representation amounts to intermeddling. See **John Kasyoki Kieti –vs- Tabitha Nzivulu Kieti & another Machakos High Court Civil Case No.95 of 2001**.

11. For the above reasons, I find the applicant’s application is devoid of merit. The same is dismissed but with no order as to costs.

12. Orders accordingly.

Ruling delivered, dated and signed in open Court at Kakamega this 25th day of February 2016.

RUTH N. SITATI

J U D G E

In the presence of:

M/s Musiega (absent) for Applicants

Mr. Machafu (present) for Respondent

Mr. Lagat - Court Assistant