



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KAKAMEGA
SUCCESSION CAUSE NO.871 OF 2012

IN THE MATTER OF THE ESTATE OF ASOGA SHABANGA – DECEASED

BENJAMIN SHAHASI ASOGAPETITIONER/RESPONDENT

VERSUS

BURTON ASOGA SHAVANGAOBJECTOR/APPLICANT

RULING

Introduction

1. On the 13/07/2015 Benjamin Shahasi Asoga was issued with a rectified Grant of Letters of Administration to the estate of Asoga Shabanga who died on 04/11/1977 at Serem in the current Vihiga County. The original grant had been issued by the Resident Magistrate's Court at Hamisi on 09/10/2009 in Hamisi RMC Succession Cause No.16 of 2009. The same had been confirmed on 15/10/2009 with the only asset comprising the deceased's estate being L.P No.Kakamega/Serem/147 wholly devolving to the Petitioner herein.

The Application

2. By the Chamber Summons dated 17/12/2015, the applicant Burton Asoga Shavanga prays for a raft of orders among them being prayer 5 of the Summons to the effect that the rectified grant of Letters of Administration dated 13/07/2015 be altered and/or amended to include Burton Asoga Shavanga as joint administrator of the estate of the late Asoga Shavanga. The applicant also prays, at prayer 6 of the Summons to be at liberty to file Summons for the confirmation of the grant not later than thirty days from the date of alteration of amendment of the grant. He also prays for costs.
3. The grounds in support of the application are set out on its face, the main one being that the Petitioner has refused to revert L.P No. Kakamega/Serem/147 into the name of the deceased and has also refused to move the Court for confirmation of the grant, as he continues to retain the title to the above stated property in his name. The applicant contends that the proposed alteration/amendment will ensure proper administration of the deceased's estate. The application is also premised on the applicant's affidavit sworn on 17/12/2015. Annexure marked BAS-2 to the applicant's affidavit shows that the suit land is in the name of the Petitioner/Respondent.

Response to the Application

4. The Petitioner opposed the application by filing his replying affidavit dated 12/02/2016. It is the Petitioner's contention that the Land Registrar has been unable to act on the Court orders because of a caution registered against the suit property by the applicant. He denies that he has prevented

the Objector from accessing the suit land. He also avers that the applicant is guilty of material non-disclosure by failing to inform the Court that he (applicant) lives on a different parcel of land on which his father was buried and that he (applicant) has forcefully entered onto the suit land where he has built a house and rented it out to third parties who are also tilling the land. The Petitioner also says that as a grandson to the deceased, the applicant does not rank higher in priority to the Petitioner. He prays that the application be dismissed. A copy of the official search dated 02/02/2016 shows that there is a caution in favour of the applicant registered on 29/06/2013. The applicant did not file a supplementary affidavit in response to the replying affidavit which means that the factual position stated in the Replying Affidavit remains unchallenged.

The Submissions

5. The parties filed and exchanged their written submissions. The applicant's submissions are dated 07/03/2016 and filed on 24/03/2016. The Petitioner's submissions are dated 29/03/2016 and filed on 30/03/2016. I have carefully read through the rival submissions.

Analysis and Determination

6. The issue for determination is whether the applicant has shown sufficient cause as provided under the Law of Succession Act to warrant revocation and or amendment of the rectified grant issued to the Petitioner on 13/07/2015 and/or reversion of the suit title into the deceased's name. The applicant relies on Sections 47 and 74 of the Law of Succession Act, Cap 160 Laws of Kenya (the Act) and Rules 49 and 73 of the Probate and Administration Rules (the Rules) made under the Act. Section 74 of the Act makes provision for rectification of errors in names and descriptions, or in setting out the time and place of the deceased's death, or the purpose in a limited grant. Such rectifications can be done as a matter of course before or after confirmation. Section 47 on the other hand gives this Court the jurisdiction to entertain any application and determine any dispute under the Act and to pronounce such decrees and make such orders therein as may be expedient. The provisions Rule 73 of the Rule are in tandem with the provisions of Section 47 of the Act Rule 49 of the Rules provides for the mode of filing applications under the Act for which no provision is made.
7. Putting these provisions alongside the application and the submissions, I have reached the conclusion that the applicant has not make out a case for revocation of the grant. The reason for saying this is that though the suit land was transferred to the Petitioner/Respondent pursuant to the confirmed grant issued by the Court at Hamisi it is now apparent that the rectified grant be confirmed in accordance with the provisions of the law. There is therefore the necessity for the title of the suit land to revert to the name of the deceased for purposes of confirmation of the rectified grant of letters of Administration intestate issued by this Honourable Court on 13/07/2015.

Conclusion

8. For the above reasons, I make the following further orders:-
 1. The applicant shall, within thirty (30) days from the date of this ruling remove the caution that was placed on the suit land on 29/06/2012.
 2. Thereafter, the Petitioner shall within sixty (60) days from the date of removal of the caution have the title of the suit land reverted to the name of the deceased.
 3. Thereafter and within thirty (30) days of the reversion, the Petitioner shall move the Court for confirmation of the grant.
 4. In default of (1) above, the Petitioner shall be at liberty to apply on the strength of this order to have the caution removed.
 5. The DR shall list this matter for mention before this Court at the close of one hundred and twenty (120) days from the date of this ruling.

9. Orders accordingly.

Ruling delivered, dated and signed in open Court at Kakamega this 23rd day of June 2016.

RUTH N. SITATI

J U D G E

In the presence of:

Mr. Musiega (absent) For Applicant/Objector

Mr. Osanyo for Mukhwana For Respondent/Petitioner

Mr. Okoiti - Court Assistant