



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

SUCCESSION CAUSE NO.158 OF 2016

**IN THE MATTER OF THE ESTATE OF THE LATE CHARLES MASAMBAKA JUMA LIAS
CHARLES MASAMBAGA CHUMA**

BETWEEN

GETRUDE I. AKONYA LIUVAAPPLICANT

AND

JOHN JUMA MASAMBAGA & 3 OTHERS

J U D G M E N T

Introduction

1. From the records, the deceased herein Charles Masambaka Juma alias Charles Masambaga Chuma died sometime in 1987 and was survived by among others, Hudson Liuva, who was husband to the applicant herein. The said Hudson Liuva also died in 1991. The deceased left behind one parcel of land known as Kakamega/Cheptulu/50.
2. After the death of the deceased, John Juma Masambaga applied for and was issued with Grant of Letters of Administration Intestate. The said Grant was confirmed on 08/01/2013. Though no copies of either the original Grant or Certificate of Confirmation have been availed to the Court, the Green Card shows that Solomon Isolio Aligula was given 0.4Ha out of L.P Kakamega/Cheptulu/50 while the balance thereof was to be shared equally among the following persons: John Juma Musambaga (ID.No.10495590), Daniel Aluvanze (ID No.10497788) and Stephen Mulwale (ID No.22248642). According to Part A- Property Section of The Green Card, the land in dispute measures 0.6Ha. The Land Certificate was issued to the deceased on 13/08/1976 while the subdivisions and transfers after succession were registered on 07/04/2014.

The Summons for Revocation

3. On 29/02/2015, the applicant filed her Summons for Revocation of Grant. She also prayed for a prohibitory order restraining any dealings in respect of the deceased's estate. The reasons for the application are that the applicant's husband who was the eldest son of the deceased was not included among the beneficiaries of the deceased's estate and further that the Grant of Letters of Administration Intestate was obtained fraudulently and by concealment of material facts. The applicant also alleges that the Petitioner did not obtain the consent of the Objectors before proceeding with the Succession cause.

Affidavits and Submissions

4. The Summons proceeded by way of affidavits and written submissions. Apart from the applicant's supporting affidavit the following filed their respective affidavits in opposition to the Summons for revocation: John Juma Masambaga, Solomon Isolio and Charles Inyanje Isolio. I have carefully read through all the affidavits. The applicant and Mr. S.B.A. Mukabwa for the 4th Petitioner filed their written submissions. I have read through both sets of submissions. The applicant reiterates the grounds set out on the face of the application and in her supporting affidavit and contends that the Petitioners have defrauded the rightful beneficiaries of a share in the deceased's estate.
5. The 4th petitioner on the other hand contends that he has been wrongly described as a Petitioner when he is a buyer for value. Mr. S.B.A Mukabwa cited the case of **In Re Estate of Ngugi (Deceased) [2002] 2 KLR 434** for the proposition that where the complaint of the applicant in the cause relates only to the Confirmation of Grant "revocation or annulment of the relevant grant should not be asked for in the application as the Certificate of Confirmation of a grant could be dealt with without affecting the validity and conditions of the parent grant of letters of Administration or the parent grant of probate." Counsel also relied on Section 93 of the Law of Succession Act Cap 160 of the Laws of Kenya and especially Section 93(2) thereof to the effect that "A transfer of immovable property by a personal representative to a purchaser shall not be invalidated by reason only that the purchaser may have notice that all debts liabilities funeral and testamentary or administration expenses, duties and legacies of the deceased have not been discharged nor provided for." Under Subsection (1) such a transfer" shall be valid, notwithstanding any subsequent revocation or variation of the grant either before or after commencement of this Act."

Issues for Determination

6. From the foregoing the issue that arises for determination is whether the applicant has appropriately moved this Court for the orders sought. In my considered view, I would agree with Khamoni J in the Ngugi case (above) that it would not be appropriate to revoke the grant in this case as the applicant's complaint touches only on distribution of the deceased's estate. In the circumstances and noting that the applicant appears in person, I hereby strike out her Affidavit for Revocation of Grant and direct that she files her Summons of Protest within sixty (60) days from today. Costs of this application shall abide the outcome of the Protest.
7. Orders accordingly.

Judgment delivered, dated and signed in open Court at Kakamega this 20th day of July 2016.

RUTH N. SITATI

J U D G E

In the presence of:

Absent - For Applicant/1st Objector

Absent - For 2nd – 8th Objectors

Absent - For 1st – 3rd Petitioners/Respondent

Mr. Mukabwa For 4th Petitioner/Respondent

Mr. Lagat – Court Assistant