



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT EMBU
SUCCESSION CAUSE NO. 214 OF 2010

IN THE MATTER OF THE ESTATE OF NTHIGA MBOGO (DECEASED)

MARY WAMBETI EDWARD & 9 OTHERS.....APPLICANTS

VERSUS

LYDIA MUTHONI DANIEL.....RESPONDENT

R U L I N G

1. This is an application for revocation of grant dated 8/4/2015 seeking for orders that the amended certificate of confirmation of grant issued on 3/11/2014 be revoked and that the ruling by this court on 30/10/2014 be set aside. The application is supported by the affidavit of Mary Wambeti Edward stating that the respondent has intentions of evicting her and the other respondents.
2. The respondent filed preliminary objection dated 4/8/2015 stating that the application does not conform to the provisions of Section 76 of the Law of Succession Act and that it offends Rule 44 of the Probate and Administration Rules.
3. The respondent also filed a replying affidavit stating that the applicants who are her step children have intentions of disinheriting her.
4. It is noted that the applicants have authorized a person who I believe is not an advocate to represent them in this case. My belief is based on the unprofessional manner in which the authority dated 8/4/2015 is worded. However, the unauthorized person is named Andrew Ileri Njeru but did not show up to prosecute the summons. Instead, the 1st applicant Mary Wambeti appeared in court and prosecuted the application in person. Such an authority is contrary to the law and is hereby struck out.
5. However, the court perused the file and noted some important issues relevant to this summons and which were not brought to the notice of the court by the parties.
6. For this reason, the court will not deal with the evidence of the parties which mostly deals with the distribution of the estate. This evidence could be used at a later stage if the parties so agrees.
7. The other important aspect is that the applicants have cautioned the parcels in question. The respondent formally applied for removal of the cautions in respect of all the 5 titles in her application 8/4/2015 and which was opposed by the respondents. This court declined to grant the orders and directed that this summons for revocation dated 8/4/2015 be heard first.
8. I proceed to deal with the important issues mentioned above. Firstly, the chief's letter dated 9/9/2009 lists all the beneficiaries of the deceased's estate including the parties in this case. The letter states that

the deceased's family had agreed that the widow Lydia Muthoni Daniel and daughter Mary Wambeti Edward file this cause and be the administrators of the estate.

9. The cause was gazetted on 3/12/2010 with the names of the two petitioners and were shortly afterwards appointed joint administrators of the estate. The letters of administration intestate was signed by Warsame, J. on 3/3/2011. The said letters are still in force and have not been revoked. It is strange that Mary Wambeti Daniel is now applying to have the letters revoked and that she be appointed a co-administrator to represent the interests of the first house while she is already a co-administrator.

10. The applicant and her siblings were served with the application for confirmation of grant. They did not file any protest against confirmation and the court proceeded to conform the grant. The certificate was issued in favour of the respondent who was the sole beneficiary in respect of the deceased's estate. The development seems to have provoked the applicants to bring this summons for revocation.

11. Taking into consideration that the estate had two administrators, the 2nd administrator should have played her role in order to represent the first family. The record shows that the estate has several beneficiaries. It is not in dispute that the sons of the deceased had been provided for during his lifetime. This leaves the widow and the daughters who are now fighting it out in court.

12. With this background, the interests of both houses is taken care of by the two administrators. However, I find no material justifying revocation of grant under Section 76 of the Act.

13. However, in the interests of justice, I hereby order that the orders for confirmation of grant issued on 3/11/2015 be and are hereby set aside. The certificate of confirmation is accordingly quashed.

14. The co-administrators or any of them are hereby directed to file a fresh confirmation of grant summons within 30 days.

15. There is no order as to costs.

DELIVERED, DATED AND SIGNED AT EMBU THIS 20TH DAY OF SEPTEMBER, 2016.

F. MUCHEMI

J U D G E

In the presence of:-

1st, 2nd, 3rd Applicants Respondent