



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT EMBU

SUCCESSION CAUSE NO. 140 OF 2006

**IN THE MATTER OF THE ESTATE OF JADIEL NJERU PETER alias KABURICHI PETER
(DECEASED)**

CECILY WANJIRU KARIUKI

PETER NJAGI NJERU.....PETITIONERS

VERSUS

BETH GICUKU PETER.....RESPONDENT

RULING

1. The two applicants/petitioners have applied by way of notice of motion under Rules 49 and 73 of the Probate and Administration Rules seeking the following orders: first, that the application be certified urgent and be heard *ex-parte* which is now spent. Second, that the court stays/reviews and/or sets aside its ruling of 14th April 2016, which revoked the grant that was made in favour of the petitioners. Third, that all restrictions and prohibitions including cautions lodged against land reference Kyeni/Kigumo/1211 be lifted or be removed immediately. Fourth, that costs of this application be provided for.

2. The application is supported by the grounds on the face of the motion. Ground one is that the petitioners successfully petitioned and were granted letters of administration intestate which were subsequently confirmed. Ground two is that following the confirmed grant, the first applicant was registered as the owner of the suit land. Ground three is that the respondent secretly and maliciously filed an application for revocation of the grant made in favour of the applicant. Ground four, is that the respondent and her advocate conspired not to serve the applicants and as a result the application was heard *ex-parte* without the applicants being present. In ground five is that the confirmed grant was revoked without the applicant being involved and therefore they were condemned unheard.

3. In ground six, the petitioners have stated that the respondent obtained prohibitory orders which they proceeded to register against the suit land and it is for these reasons that the applicants are seeking prayers to have the ruling set aside or be stayed so that they can enjoy the fruits of their judgement.

4. The application is anchored in the supporting affidavit of the first applicant. She has repeated in affidavit evidence form what she has stated in her grounds on the face of the motion. More importantly, she has deponed that the respondent secretly and maliciously filed the application dated 13th January 2015 which application was heard *ex-parte* and as a result the applicants were condemned unheard which she further depones is against the rules of natural justice.

5. It is also her affidavit evidence that they were not served with the application. She has further deponed

that the affidavit of service by G.M. Karuoro purporting to show that the applicants were served with the application for revocation is a sham and a fraud which they intend to challenge in court. She has further deponed that the respondent unlawfully obtained prohibitory orders which she proceeded to register against the suit land. The applicant has also deponed that the court should grant the orders sought since they were given the suit land by the court.

6. The respondent has filed a replying affidavit in opposition to the applicant's application. She has deponed that the applicants were served with notice of hearing and they failed to attend court. She has also deponed that she testified and a ruling was made in her favour on 14th April 2016, which revoked the confirmed grant in favour of the applicants. She has deponed that she opposes a stay of this court's ruling. She has also deponed that she is opposed to the removal of the restrictions and prohibitions registered against the suit land. Furthermore, she has stated that following the advice of her advocate, a new process of administration ought to commence with the rightful beneficiaries applying for letters of administration intestate.

7. The respondent has also deponed that following the revocation of the grant, the respondents ought to have appealed to the Court of Appeal. She has stated that she is apprehensive that the respondents will sell and transfer the suit land to third parties if their prayer No. 3 is allowed. Finally, she has deponed that it is only fair that her application dated 12th May 2016 be heard and determined.

8. Counsel for both parties filed written submissions which I have carefully considered. The applicant's/respondent's counsel has submitted that *"the court cannot reinstate a revoked and or annulled grant. The avenue available is an appeal to the Court of Appeal. When a certificate of confirmed grant is revoked, a new petition for issuing of letters of administration and certificate of grant ought to commence. These proceedings should be instituted by the rightful and entitled parties."* Counsel for the respondent has further submitted that the respondent was entitled to place restrictions in respect of the suit land to protect her interests. He has further submitted that the respondent has a priority in the Law of Succession for petition for the grant of letters of administration intestate in respect of her deceased son.

9. The petitioners' counsel has submitted that the court ought to review the ruling of 24th April 2016. Counsel has relied on Order 45 of the 2010 Civil Procedure Rules, Article 159 (a) of the 2010 Constitution and the overriding objectives as set out in sections 1A (1) and 1B (1) of the 2010 Civil Procedure Rules.

10. I have considered the affidavit evidence of both parties and the submissions of both counsel. I find that it is only fair to give the petitioners an opportunity to challenge the respondent since the proceedings were conducted in their absence. And for this reason, the two petitioners are given leave to respond to Mr. Ithiga's application for revocation of grant.

11. There will be no orders to costs.

RULING DELIVERED, DATED and SIGNED in open court at **EMBU** this **11th** day of **OCTOBER 2016**.

In the presence of Ms Magara for the petitioners and Mr Ithiga for the respondent.

Court clerk Njue

J.M. BWONWONGA

JUDGE

11.10.16