



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

SUCCESSION CAUSE NO. 283 OF 2012

IN THE MATTER OF THE ESTATE OF JACOB KATHUKA (DECEASED)

KANGUNDO FARMING & RANCHING (ITHANGA) LIMITED APPLICANT

VERSUS

RABECAH MWIKALI JACOB.....PETITIONER/RESPONDENT

RULING

1. The Applicant, **Kangundo Farming & Ranching (Ithanga) Ltd**, in an application dated 8/11/2012 seeks orders that the grant of letters of Administration issued to **Rebecca Mwikali Jacob** on the 22nd day of August, 2012 be annulled.
2. According to the affidavit in support and further affidavits filed, the Grant was obtained fraudulently by the making of a false statement and concealment of material facts to the court. It is contended that land parcel **Block 44B** situated on **LR No. 11931/2 Ndithini Division Machakos** which is the subject of this succession cause does not exist in the Applicant's scheme. That what exists is **L.P. No. 44** which belongs to the Applicant and which has been the subject of litigation between the deceased, the Applicant and others in **HCCC No. 188 of 2008 Machakos (formerly Mks HCCC No. 92 of 2003)**. It is further asserted that the said suit was abated on 4/6/2012 following the death of the deceased.
3. It is further averred that the Respondent has failed to disclose that the deceased was the owner of **L.P. Nos. 56 and 58** situate on **LR No. 11931/2 Ndithini Division Machakos**. That the deceased also owned another parcel of land in **Kangundo** where his remains were buried.
4. That any purchase of the suit property was not sanctioned by the Respondent. The Applicant's position is that the deceased carried out fraudulent transactions on the land in question.
5. In opposition to the application, the Respondent swore a replying affidavit. It is the Respondent's position that the Applicant is a stranger to the estate of the deceased and has no role to play in the estate of the deceased. That if any assets were omitted, the grant can be rectified. That **LP No. 44B** is a subdivision of **LP No. 44** which was purchased from one **Abednego Ali**. That the family of the deceased has been in occupation of **LP No. 44 B** from the year 1983 and they have substantially developed the same. That the purported society (Applicant) does not exist and the purported board's resolution has no force of law.
6. The application was canvassed by way of written submissions which I have duly considered.
7. It is noted that the Respondent has not denied the omission of some of the properties belonging to the deceased. Although the Respondents stated that the grant can be rectified, it is noted that no reasons have

been given why there was such an omission. The averment by the Applicant therefore confirms that there was concealment of material facts to the court.

8. The **Law of Succession Act Cap 160 Laws of Kenya** under **Section 76 (b)** provides for revocation/annulment of grant, if, *inter alia*;

“...the grant was obtained fraudulently by the making of a false statement or by the concealment from the court of something material to the case;

9. The Applicant also contravened **Rule 7 (1) (d)** of the **Probate & Administration Rules** which provides that the Applicant must provide particulars which include *inter alia*, a full inventory of all the assets and liabilities of the deceased at the time of death.

10. The Respondent has not rebutted the contention by the Applicant that the suit property was the subject of a suit that abated. The order exhibited by the Applicant shows that the Plaintiff’s suit against the Defendant abated. Likewise, the Defendant’s counter claim against the Plaintiff abated. It seems the dispute was left unresolved and is still simmering.

11. With the foregoing, this court cannot proceed with the transmission of the property herein. I will therefore stay this succession cause for the parties to sort out the question of the ownership of the said land. Consequently, I see no reason to revoke the grant herein. The Respondent is at liberty to apply to bring on board any other properties owned by the deceased. Orders accordingly.

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B. THURANIRA JADEN

JUDGE

Dated and delivered at Machakos this 19th day of February 2015.

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JUDGE