



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KAKAMEGA
SUCC CAUSE NO.162 OF 2011

IN THE MATTER OF THE ESTATE OF IBRAHIM NAHO MUHANJI (DECEASED)

ATHIAYA GISITO MUHANJIPETITIONER/RESPONDENT

VERSUS

LUCY MWELEME ANYANDAOBJECTOR

FRANCIS MUKHHOBI LUTIKOINTENDED RESPONDENT

R U L I N G

1. From the records, the deceased, who was then aged 73 years died at the then Provincial General Hospital Kakamega on 15/08/1980. According to Form P & A 5, the deceased was allegedly survived by Athiaya Gisito Muhanji and left behind three parcels of land, namely LP No.Isukha/Shitochi/68, Isukha/Shitochi/87 and Isukha/Shitochi/313. Athiaya Gisito Muhanji said he was/is son to the deceased.

2. On 22/06/2011, Athiaya Gisito Muhanji was issued with Grant of Letters of Administration Intestate and the same were confirmed on 23/05/2012 in the following terms:-

1. LR No.ISUKHA/SHITOCHI/68

Athiaya Gisito Muhanji – whole

2. LR No.ISUKHA/SHITOCHI/87

Athiaya Gisito Muhanji – whole

3. LR No.ISUKHA/SHITOCHI/313

Athiaya Gisito Muhanji - whole

3. On the 28/03/2014, Lucy Mweleme Anyanda moved the Court by way of Summons for Revocation and/or annulment of grant seeking ORDERS:

1. *THAT the Grant of Letters of Administration Intestate issued on 22.06.11 and Certificate of Confirmation of Grant issued on 23.05.2012 to the Petitioner/Respondent be revoked and/or annulled.*

2. *THAT a prohibitory order do issue restricting any dealings in respect of land parcel No.ISUKHA/SHITOCHI/68,87 and 313 pending the hearing and determination of this objection*

proceedings.

3. *THAT FRANCIS MUKHOB LUTIKO be made a party to these proceedings as a Respondent*

4. *THAT subsequent registration of the deceased parcel of land No.ISUKHA/SHITACHI/68,87 and 313 and transfer to 3rd parties be cancelled and the same be reverted to the deceased IBRAHIM NAHO MUHANJI's names.*

5. *THAT the Respondents either by themselves or through their agents, servants and/or representatives be restrained by an order of the Honourable from interfering with occupation of the parcel of land No.ISUKHA/SHITACHI/68,87 and 313 by the Objector/Applicant herein and or other beneficiaries in respect of the estate of the deceased.*

6. *THAT the costs of this application be provided for.*

4. The Summons was premised on grounds set out on the face of the Summons and supported by the affidavit sworn by the Objector/Applicant, Lucy Mweleme Anyanda. The two main grounds are that the Grant of Letters of Administration Intestate issued to the Petitioner herein was obtained fraudulently by concealment of material facts and secondly, that the Objector and other beneficiaries were disinherited of their shares.

5. In her affidavit in support of the Summons the Objector/Applicant states that her late husband Lawrence Anyanda was son to the deceased. That the deceased had 3 houses as follows:-

1. Cecilia Alusa (1st wife) who had the following

Children: a) Lawrence Anyanda – son (Deceased)

b) Andrea Shisule – son (Deceased)

2. Loise Mwitili (2nd wife) whose children are:-

a) Gisito Athiaya Muhanji – son Petitioner

b) Otinga Makunga – son

c) John Ingoi – son (Deceased)

6. The Objector/Applicant avers that she was not made aware of the process which culminated in the issuance of the Grant of Letters of Administration intestate and its subsequent confirmation giving the deceased's entire estate to the Petitioner.

7. Though the Petitioner/Respondent was duly served with the Summons on 20/06/2015, he did not file any replying papers to the same; and when the Summons came up for hearing before me on 01/07/2015, Mr. Khayumbi for the Objector/Applicant asked for a ruling date. He told the Court that he wholly relied on the affidavit and grounds on the face of the Summons.

8. I have now carefully considered the Summons and the grounds on the face thereof together with the affidavit in support. From the record, which is brief, the Petitioner/Respondent appeared before Hon. Mr. Chitembwe J on 07/05/2012 and stated the following in support of the Summons for Confirmation of Grant.

“My brother is deceased. He had no children. My sister is married.”

The Court then proceeded to confirm the grant as prayed.

9. Now, considering the averments in the Summons for revocation and/or annulment I am satisfied that the Objector/Applicant has made out a case for the orders sought. Section 76 of the Law of Succession Act, Cap 160 of the Laws of Kenya provides as follows:-

“76. A grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by any interested party or of its own motion -

(a) that the proceedings to obtain the grant were defective in substance;

(b) that 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;

(c) that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently;

(d) that the person to whom the grant was made has failed, after due notice and without reasonable cause either -

(i) to apply for confirmation of the grant within one year from the date thereof, or such longer period as the court has ordered or allowed; or

(ii) to proceed diligently with the administration of the estate; or

(iii) to produce to the court, within the time prescribed, any such inventory or account of administration as is required by the provisions of paragraphs (e) and (g) of section 83 or has produced any such inventory or account which is false in any material particular; or

(e) that the grant has become useless and inoperative through subsequent circumstances.”

10. It is thus clear from the above provisions that the Court either on its own Motion or on the application of any interested party and whether the grant of representation has been confirmed or not can revoke or annul a grant if the Court so decides. I am satisfied in the instant case that the grant herein was issued to the Petitioner/Respondent through fraudulent means and by non-disclosure of material facts, such as that the Petitioner/Respondent was NOT the only survivor and/or beneficiary of the deceased's estate. Accordingly, I allow the Summons dated 24/03/2014 in terms of prayers 1, and 4 thereof. It is my considered view that prayer 2 is overtaken by events, and so is prayer 5. Prayer 3 of the Summons can be dealt with during subsequent proceedings hereafter.

11. I also direct that a new grant of Letters of Administration intestate be issued in the joint names of the Petitioner herein Athiaya Gisito Muhanji and the Objector and Lucy Mweleme Anyanda.

12. The parties are further directed to either jointly or separately file Summons for Confirmation of Grant within sixty (60) days from the date of this ruling. If there is no agreement, each, party shall file their respective pleadings within the 60-day period herein above stated.

13. The costs of this application shall be in the cause.

Orders accordingly.

Ruling delivered, dated and signed in open Court this 23RD day of SEPTEMBER 2015.

RUTH N. SITATI

JUDGE

In the presence of:

M/s Rauto h/b for Mr. Khayumbi for Objector/Applicant

Absent for Petitioner/Respondent

Mr. Solomon Lagat - Court Assistant