



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

PROBATE AND ADMINISTRATION NO. 491 OF 2012

IN THE MATTER OF THE ESTATE OF KIMANZI NGUU (DECEASED)

1. KALEE MUSYOKA

2. NZOKI KITONGU..... APPLICANTS

VERSUS

JUSTUS MUTUA KIMANZI.....RESPONDENT

RULING

1. The applicants herein filed an application dated the 23rd day of May, 2012 seeking annulment of a grant of letters of administration (grant) issued on 11th May, 2011 to **JUSTUS MUTUA KIMANZI** in Kitui Principal Magistrate's Succession Cause Number **53 of 2006**.
2. The application is premised on grounds that the grant was obtained **fraudulently** and through **forgery** by making of a false statement and documents and/or by the concealment from the court of something material for the case.
3. The applicants deponed an affidavit in support of the application stating that the deceased owned Parcel Number **Nzambani/Maluma/827,(subject land)**. They were heirs and/or beneficiaries. The respondent forged their authority in the succession proceedings by using fake thumbprints which caused the land to be transferred to him solely disregarding their share to the title. Consequently, he was charged with a criminal offence in **Kitui Criminal Case No.703 of 2011**. The only way to attain equity in distribution is to annul the grant and have the parcel of land sub divided and registered in all their names.
4. The applicants filed a supplementary affidavit deposing that they were the deceased's daughters-in-laws, their deceased husbands **Musyoka Kimanzi** and **Kitongu Kimanzi**, brothers to the respondent were beneficiaries to the estate of the deceased; Land parcel No. **Nzambani/Maluma/827** is divided into three(3) portions occupied by themselves and the respondent; they became aware of the succession proceedings when the respondent began removing the common boundaries claiming ownership of the entire parcel of land.
5. In response thereto, the respondent swore a replying affidavit stating that the grant was made to him legally. There was no forgery as the subject land was allocated to him by their late father. Land Title No. **Nzambani/Maluma/826** was legally allocated to **Samson Kitongu Kimanzi (deceased)** husband to **Nzoki Kitongu** while Titles No. **Nzambani/Maluma/908** and **831** were legally allocated to **Musyoka Kimanzi (deceased)**- husband of **Kalee Musyoka**. There was no fraud whatsoever.

6. It was submitted by Counsel for the respondent that no evidence was adduced to prove fraud or misrepresentation of material facts. There was also no proof of any forgery by a competent court of the alleged forgery.

7. The application has been brought pursuant to the provisions of **section 76 of the Law of Succession Act** that provides thus:

“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 order or allow; 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”.***

In this case the application hinges on **section 76(b) of the Law of Succession Act**.

8. I acted ***suo moto*** and called for the succession matter where the grant in issue was made. A perusal of the same reveals that the deceased was survived by eleven (11) beneficiaries, the deceased husbands of the applicants inclusive. **Katonye Kimanzi** a wife of the deceased and a daughter **Syombua Makau** were indicated as being alive. These two (2) persons did not sign the consent to the mode of distribution of the Estate. The applicants who are indicated as having thumbprinted on the document have disowned the fingerprints. They went a step further by reporting the respondent to the police. Consequently investigations were carried out that culminated into the respondent being charged with a criminal offence of forgery.

9. In his response to the supplementary affidavit, the respondent stated that:

“The allegations of forgery are neither here nor there”

But, he did not comment on the thumbprints that were appended on the document.

10. It is argued that the deceased sub-divided the land into different

Portions and allocated it to families of the applicants different portions. While the subject land was allocated to the respondent. If all the parcels do exist and are in the name of the deceased then they ought to have been listed as assets forming the Estate of the deceased.

11. This may be a case where the grant was obtained by the respondent having made a false statement. In

the premises it calls upon the court to revoke it.

12. Consequently, I do revoke the confirmed grant. Parties shall wait for the outcome of the Criminal Case prior to making an application for issuance of a fresh grant.

13. It is so ordered.

DATED, SIGNED and DELIVERED at KITUI this 22nd day of SEPTEMBER, 2015.

L.N. MUTENDE

JUDGE