



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NYERI
SUCCESSION CAUSE NO. 5 OF 1979

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

MURIUKI KAUMBUTHU.....APPLICANT

VERSUS

NYAGA MBOGO.....RESPONDENT

RULING

The applicant filed in this court a summons in general form dated 11th March, 2015 primarily seeking for an order that that Joseph Mbogo, James Nyaga Mbogo, Moses Njiru, Njomo Mbogo Katharanguchu, Salesio Nyua Nyaga and Patrick Mutitu be substituted and be joined in this cause in place of Nyaga Mbogo (deceased) as respondents.

In the affidavit in support of the summons the applicant has sworn an affidavit in which he deposes that the respondent is deceased and according to the copy of the certificate of death attached to the affidavit, he died way back in 2011.

The applicant has sworn that prior to his death and “*during the pendency of this revocation cause*” the deceased transferred the suit land being **L.R. No. Kagaari/Kigaa/404** to Joseph Mbogo, James Nyaga Mbogo, Moses Njiru, Njomo Mbogo Katharanguchu, Salesio Nyua Nyaga and Patrick Mutitu.

The transfer of the suit land, according to the applicant, was effected inspite of the judgment in **Nairobi HCCC No. 1253/1975** in which it was allegedly ordered that the land registrar does register the suitland in the names of Ndagara W/o Kaumbuthu and Muriuki S/o Kaumbuthu as proprietors in common in equal shares.

Joseph Mbogo, a beneficiary of the estate of Mbogo Kaumbuthu, and apparently one of the persons sought to be substituted in this cause in place of Nyaga Mbogo opposed the application.

In his replying affidavit, he swore that he is a son to the deceased whose estate is apparently the subject of the succession cause herein.

He has admitted that the deceased’s estate has been transferred to him together with the rest of the beneficiaries of the deceased’s estate following the confirmation of the grant of letters of administration of the deceased’s estate on 15th July, 2004.

Subsequent to the confirmation, so Joseph Mbogo has sworn, the applicant’s mother filed several applications including one for revocation of grant but they were all dismissed. The applicant’s own

application for revocation of grant was also dismissed.

According to Joseph Mbogo, there is nothing pending for determination in this cause.

At the hearing of his application the applicant admitted that his application for revocation of grant had been dismissed for want of prosecution and the order for dismissing the application was never vacated.

On his part Mr Njage for Joseph Mbogo submitted that there is nothing pending in the matter as the grant was confirmed and the estate distributed.

Counsel also submitted the application for substitution was time-barred in any event because it is more than a year since the person sought to be substituted died. He urged this court to dismiss the application.

I have considered the applicant's application, the affidavit in support thereof and the replying affidavit thereto. I have also considered the submissions by both the applicant and counsel for Joseph Mbogo.

I agree with counsel for Joseph Mbogo that there is nothing left for determination in this cause. A certificate of confirmation of grant dated 15th July, 2004 shows that the grant of representation to the deceased's estate was confirmed on that date. According to the schedule to that certificate, each of the deceased's survivors or beneficiaries to his estate was allocated a share of the estate. What I also gather from both the applicant and Joseph Mbogo is that the estate has since been shared out and transferred to individual beneficiaries as per the schedule.

I have also noted from the record that subsequent summonses for revocation of grant were dismissed for one reason or another. In the circumstances, there is nothing left for determination in this cause that would warrant orders for substitution of parties which the applicant is seeking. I am not satisfied that the applicant's application is merited. It is hereby dismissed with costs.

Signed, dated and delivered in open court this 30th day of October, 2015

Ngaah Jairus

JUDGE