



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**SUCCESSION CAUSE NO. 2810 OF 2012**

**IN THE MATTER OF THE ESTATE OF VINCENT AGOSTINHO RAPHAEL LUIS  
(DECEASED)**

**RULING**

1. The application dated 17<sup>th</sup> November 2014 seeks revocation of the grant of probate of the will of the deceased. The grant is dated 1<sup>st</sup> March 2013.
2. The ground upon which revocation is sought is that one of the assets distributed, Nakuru/Piave Settlement Scheme/1057 does not belong to the estate of the deceased.
3. The applicant, Peter Muchiri Mwangi, is not a beneficiary named in the will the subject of the cause. He claims that the property is registered in his name, was not among the assets distributed by the will of the deceased and therefore it ought not have been distributed.
4. The reply to the application takes the form of a notice of preliminary objection dated 27<sup>th</sup> November 2014. The respondent says that the court has no jurisdiction to hear the Summons for Revocation of grant on the basis that the same is an abuse of the court process, the applicant is an intermeddler and that the applicant is estopped for bringing the application.
5. I note that the respondent has not sworn an affidavit to place facts before the court to demonstrate that the applicant is an intermeddler and or is estopped. Whether there is estoppel operating against the applicant or that he has intermeddled with the estate are matters of fact to be dealt with in an affidavit.
6. Be that as it may, I directed that the jurisdiction issue be disposed of first by way of written submissions. Both sides have filed their respective submissions.
7. I have noted elsewhere in the ruling that the applicant is not a beneficiary under the will of the deceased, he comes in as a third party with a claim against the estate with respect to his interest in in one of the assets the subject of the proceedings.
8. The interest claimed by the applicant should be pursued ideally in separate proceedings. It is not the place in probate proceedings for a probate court to determine ownership of assets as between the estate and third party claimants. Such matters are to be determined in separate proceedings properly brought against the estate as defendant by the applicant as plaintiff. To that extent I am in agreement with the respondent that there is a question of jurisdiction.
9. I have perused the will on record, and noted that the same does not dispose of Nakuru/Piave Settlement Scheme/1057. To that extent the said property does not vest in the executrix and cannot be dealt with in these proceedings. It ought not have been listed in the schedule of assets distributed in the certificate of confirmation of grant. There is no jurisdiction to deal with it under this probate cause.
10. Moreover, there is evidence that it is registered in the name of the applicant. There is no evidence whatsoever that it is properly belonging to the estate of the deceased. There is therefore justification in the applicant seeking intervention.

11. As pointed out in paragraph 5 of this ruling, the objection raised is not founded on pure points of law. Aspects of it can only be disposed of based on facts placed before the court.

12. I am not moved to uphold the objection. I am minded to hear the application to its final conclusion, although I am persuaded that it is not a proper case for revocation of the grant, but it is arguable and orders can be made on it in exercise of the inherent powers of the court to deal with the other issues raised in the application.

13. The preliminary objection dated 27<sup>th</sup> November 2014 is overruled. The application dated 17<sup>th</sup> November 2014 to be argued on a date to be fixed by the parties at the registry.

**DATED, SIGNED and DELIVERED at NAIROBI this 18<sup>TH</sup> DAY OF DECEMBER, 2015.**

**W. MUSYOKA**

**JUDGE**