



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MACHAKOS
SUCCESSION CAUSE NO. 307 OF 2003

IN THE MATTER OF THE ESTATE OF TABITHA MUTAVE KILONZO (DECEASED)

ALPHONSE MUTHAMA NGAUKI.....APPLICANT

VERSUS

TABITHA NDUNGWA KILONZO.....1ST RESPONDENT

WILFAR MUSYOKA KILONZO.....2ND RESPONDENT

R U L I N G

1. The Application dated **17th September, 2013** is brought pursuant to the provisions of **Section 47, 76(b)** of the **Law of Succession Act** and **Rule 44(1)** of the **Probate and Administration Rules**, where the Applicant seeks an order revoking the grant of letters of administration (grant) issued to **Tabitha Ndungwa Kilonzo** in respect of the Estate of **Tabitha Mutave Kilonzo**. The application is based on the ground that the grant was obtained fraudulently by the making of a false statement or by the concealment from the court of material facts.
2. The application is supported by an affidavit deposed by **Alphonse Muthama Ngauki**, the Applicant who states that the fact that he was a beneficiary of the Estate of the deceased by virtue of being purchaser of Land Parcel No. **Kalama/Iiuni/551** and **Kalama/Iiuni/548** was concealed from court. He learnt of issuance of the grant when the administrators sought to evict him from the land. He has resided on the land for the last **32 years** and developed it. If the grant is not revoked he will be deprived of his rightful share of the Estate of the deceased.
3. The 1st Respondent, **Tabitha Ndungwa Kilonzo** swore a replying affidavit in response. She deponed that the purported sale agreements were doctored and/or forged as the deceased did not enter into any agreement with the Applicant. That the Applicant does not have any structure on the land and has not been residing thereon; she concluded by stating that the annexures are void as they were procured by means of threats and intimidation.
4. The Applicant swore a supplementary affidavit where he stated that he has been in occupation of Land Parcel No. **Kalama/Iiuni/548** for over **25 years** where he has constructed a permanent house. He has cultivated Land Parcel No. **Kalama/Iiuni/551**. The Respondents have interfered with his occupation of land and have uprooted the sisal boundary planted by the deceased. He reported to the police who arrested the 2nd Respondent. He withdrew the complaint and the Respondents agreed to transfer to him the land.
5. On **25th November, 2013** the 2nd Respondent invaded Parcel No. **Kalama/Iiuni/551** and uprooted his crops. The deceased sold to him land voluntarily.
6. Parties agreed to dispense of the matter by way of written submissions but only the Applicant complied. I have considered the submissions.
7. **Section 76(b)** of the **Law of Succession Act** provides thus:

“(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;”

8. It has been demonstrated by annexures to the affidavit adduced by the Applicant that on diverse dates during the deceased’s lifetime they entered into sale agreements for sale of Parcel Nos. **548** and **551** between **1986** and **1988**. These agreements have been dismissed by the Respondents as forgeries. This issue was raised before clan elders who heard the matter and established that indeed the Applicant purchased land but the deceased did not involve the Respondents, her daughter-in-law and grandson respectively that is why they were aggrieved.
9. At the time of petitioning for the grant, the Respondents were aware of the existence of the Applicant who was already in possession of the Parcel of Land that he claims. It was within their knowledge that he was a creditor for the Estate of the deceased, a fact they concealed from court at the time of petitioning for the grant. This was something material that should have been disclosed.
10. The grant was confirmed and the 1st Respondent allocated herself all assets forming the Estate of the deceased.
11. The question to be answered at this stage is whether the grant should be revoked. In the matter of the Estate of **Wilson Wamegatu, Nairobi High Court Succession Cause No. 261 of 1998** where in the process of confirmation of the grant one of the administrators allocated himself prime properties hence disinheriting some beneficiaries, **Githinji J** (As he then was) stated thus:

“The order confirming the grant is set aside.

- ***The certification of confirmation of the grant is revoked.”***

The order was made to pave way for confirmation of the grant.

12. I have taken note of the fact that as a result of sale of land to the Applicant by the deceased the Respondents have been embroiled in legal tussles with the Applicant. This being the case they must be heard and the issue addressed. In the premises revocation of the grant shall not serve any purpose as the same may still issue to the Respondents who are the most preferred persons to administer the deceased’s Estate amongst other beneficiaries (**See Section 66 of the Law of Succession Act**).
13. Therefore, I do revoke the certificate of confirmation of grant dated the **13th day of May, 2008**.
14. If the property indicated in the schedule of the certificate has been registered in the name of the 1st Respondent, the register shall be rectified accordingly.
15. The Applicant shall be at liberty to file a protest to the application for confirmation of the grant within the time frame provided by the law. (**See Rule 40(6) of Probate and Administration Rules**).
16. The matter shall be mentioned for directions on a date to be fixed by parties at the registry.
17. The Applicant shall have costs of the application.

Dated at Kitui this 30TH day of NOVEMBER, 2015.

L. N. MUTENDE

JUDGE

Dated, Signed and Delivered at Machakos this 10th day of December, 2015.

P. NYAMWEYA

JUDGE