



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

SUCCESSION CAUSE NO.571 OF 2011

In the Matter of the Estate of M' Riria Mukindia

ALEXANDER MUINDI M' RIRIA.....APPLICANT/OBJECTOR

Versus

BORE M'RIRIA.....RESPONDENT/PETITIONER

RULING

Revocation and Annulment of Grant

[1] I have before me a Summons for Revocation and Annulment of Grant which is expressed to be brought under Section 76 of the Laws of Kenya and Rule 44 of the Probate and Administration Rules of CAP 160. The Applicant/Objector has sought for the following orders:

- 1. That this honourable court be pleased to certify this matter urgent and hear it ex-parte in the first instance.**
- 2. That this honourable court do transfer Chuka Succession Cause No. 82 of 2007 to this Court and the same be attached to this file.**
- 3. That an order of inhibition be placed against parcel No. Mwimbi/Chogoria/5024 and 5025 which are resultant parcels of original parcel No. Mwimbi/Chogoria 158.**
- 4. That the Grant of representation made intestate of the estate of M' Riria Mukindia issued to Bore M' Riria on 3/3/2010 in Chuka Succession Case No. 82 of 2007 be revoked and/or annulled.**
- 5. That the resultant title No. Mwimbi/Chogoria /5024 and 5025 and 5026 issued in the names of Justus Samuel Burini, Doreen Burini and Alexander Muindi M' Riria respectively be cancelled and the land do revert back to the name of the deceased herein.**

[2] The application is premises upon the grounds set out in the application, namely:

- 1. That the applicant has been defrauded of his rightful share from the estate of his father.*
- 2. That the applicant was never consulted during the filing of the Cause at Chuka and the Respondent forged his signature thus misleading the court into believing he consented to this cause.*
- 3. That the Respondent and my brother have colluded to defraud me of my rightful share claiming I have no boy child.*
- 4. That the petitioner is not entitled to benefit from this estate as he got his share before the demise of the deceased.*
- 5. That the applicant was entitled to half share from the estate herein, and what he got on the ground is not even 1 ½ acres though it is indicated as 1.80 acres.*

[3] The Respondent/Petitioner opposed the Applicant's/Objectors application and filed a replying affidavit dated 2nd November 2011 and denied that he forged the applicant's signature. He also denied that he had been given land parcel number Mwimbi/Chogoria/26 by his father and grandmother. Indeed, he deposed that he did not own any such land.

[4] When the matter came up for hearing on 14th May 2014, Makau J directed that the application to be heard by way of viva voce evidence. Then the application came up for hearing on 18th November 2015; the cause was called on for hearing, but only the Objector was present. The Petitioner/Respondent and his counsel were absent. Mr. Mutegi, counsel for the Objector/applicant stated that he was keen on proceeding with the application herein since the Petitioner had been properly served. He told the court that he had filed an affidavit of service which was on record. The court considered the request by Mr. Mutegi, perused the file and the affidavit of service; it was satisfied that notice of hearing was duly served and ordered the matter to proceed.

DETERMINATION

[5] What is the evidence before the court? The way I captured the testimony by the Objector, his case is that the Petitioner is his elder brother in a family of three brothers and three sisters. He testified that the land Mwimbi/Chogoria/158 measuring 8 acres belonged to his late father and that the Petitioner did not inform him about the succession filed in court. It was his evidence that the land is worth over 8,500,000 million and as such the subordinate court at Chuka did not have jurisdiction. He also told the court that the Petitioner had told him that since his children were daughters he would get a smaller portion. This was contrary to what his father had said that he should get 3.5 acres. He further contended that the Petitioner had 9.1 acres which he inherited from his grandfather and that he was asked to live on that land by his late father. That land was family land and was No 27. He testified that the Petitioner took his share and gave it to himself. In the circumstances, the objector asserted that only he and Samuel were to share No 158. He thus asked the court to award him 3.5 acres which belong to him.

[6] I have carefully considered the Objectors case as well as the entire evidence on record. The Petitioner and his advocate were absent during the hearing of this case despite having been served. The Objector's case therefore remains uncontroverted and unchallenged. The Petitioner denied having been given land parcel Number Mwimbi/Chogoria/26 by his father and grandfather and that he owned any such land. This argument by the Petitioner is based on an error which the Objector in his supplementary affidavit dated 5th January 2011 clarified; that he had erroneously described the land in issue as Mwimbi/Chogoria/26 instead of Mwimbi/Chogoria/27. He annexed a copy of the search showing L.R No Mwimbi/Chogoria/27 is registered in the name of the Petitioner. The Petitioner dwelt on the above error and did not say anything about L.R Mwimbi/Chogoria/27 despite the clarification by the objector and the search that was annexed thereto. In his replying affidavit, the Petitioner provided general denials with a rider that other family members were to testify on the veracity of his averments. None was called. None testified. Therefore, all his averments are not backed by any evidence. In light of the evidence before the court, I believe the Objector that L.R NO Mwimbi/Chogoria/27 was family land. Such provision of inheritance of family land is taken into account in distribution of assets of the deceased. And as it is not listed as one of the properties of the estate, that was a concealment of material fact for which a grant could be revoked. I also note that, although the value of the estate had been indicated in the Petition filed in Chuka Magistrate's court to be Kshs. 100,000. But, it is doubtful whether the magistrate's court at Chuka had any jurisdiction on the matter as there was no valuation report that informed the said value. And, on that basis alone the grant would have been revoked. I have said enough for such applications. Accordingly, in light of the evidence before the court, I allow the Objectors application dated 30th September 2011 in the following terms:-

(1) The grant of representation issued to Bore M'Riria in Chuka Succession Cause No 82 of 2007 is hereby revoked and or annulled.

(2) As a consequence thereof, title Number Mwimbi/Chogoria/5024, Mwimbi/Chogoria/5025 and Mwimbi/Chogoria/5026 shall forthwith revert back into the name of the deceased herein for purposes of this succession cause

(3) As this is a family matter which is yet to be resolved, I will make no order as to costs.

(4) Parties to agree on administrators within 14 days from today.

Dated, signed and delivered in court at Meru this 9th day of December 2015

F. GIKONYO

JUDGE

In the presence of:

Igweta Advocate for Kirima advocate for Objector

No appearance for Petitioner.

F. GIKONYO

JUDGE