



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KITALE

P & A CASE NO. 97 OF 2003

LABAN WAHOME MUTHEGI..... DECEASED

AND

JULIUS IRUNGU WAHOME

JEREMIAH NDUNGU WAHOME.....APPLICANTS

VERSUS

STANLEY GACHIHI WAHOME

CHRISPUS WANYERI WAHOME..... RESPONDENT

CHARLES KARIMI

R U L I N G

The application dated 29th October, 2009, by the objectors viz Julius Irungu Wahome and Jeremiah Ndungu Wahome, is for revocation of the grant issued to the respondent viz Stanley Gachihi Wahome, Albert Karimi Wahome and Charles Karimi Wahome, on the 18th June, 2009.

Both objectors and respondents are sons of the late Laban Wahome Muthegi (herein, the deceased) who passed away at the age of eighty-seven (87) on the 20th August, 2001.

Thereafter, on the 31st July, 2003, the respondents petitioned for letters of administration intestate respecting the estate of the deceased comprising immovable property, shares and bank accounts.

Accordingly, grant of letters of administration was issued to the respondents on the 9th June, 2004 and was confirmed on 18th June, 2009, five years down the line. The present application was filed on 30th October, 2009 and appears to be aimed at the certificate of confirmation of grant dated 18th June, 2009 rather than the grant itself.

The objectors appear not to have agreed with the proposed and confirmed mode of distribution prior to the issuance of the necessary certificate.

In their supporting affidavit dated 29th October, 2009, the objector's main complaint is that the respondents failed to take into account property which had already been given to some of the beneficiaries before the death of the deceased and in particular the parcel of land known as Trans Nzoia/Cherangani/360 given to Chrispus Wanyeri Wahome, parcel No. Marmanent/Melwa Block 1/2044 (Muhotetu) given to Albert Karimi Wahome, three (3) acres at Gatundu given to Gilbert Kirika, two (2)

acres at Cherangani given to Ruphas Waweru and two (2) acres at Londiani given to Geoffrey Munene.

On 5th July, 2011, Chrispus Wanyeri Wahome, made an application to be substituted as the second administrator in place of the second respondent herein, Albeit, Karimi Wahome, was passed away on the 28th December, 2009, before executing transfer of the estate to the beneficiaries.

The application was granted by consent of the parties on the 7th July, 2011. Chrispus Wanyeri Wahome was thus co-opted as the second respondent in the present application and in his reply to the same on behalf of his co-respondents (See, replying affidavit dated 16th April, 2013.), he stated that the first applicant, Julius Irungu Wahome, belonged to the third house of the deceased and willingly participated in the recording of the consent which was filed herein on 17th June, 2009. That, he verified the consent and appended his signature thereon. That, the issue pertaining to purchase of land by the deceased for the benefit of some of the beneficiaries was settled after it was found that the alleged property were purchased by the beneficiaries themselves. That, no fact was concealed to the court as every house had the opportunity to share what was meant for them hence no fraud was committed.

The respondents contended that the present application is incompetent and an abuse of the court process.

Written submissions were filed on behalf of the objectors by their learned counsel, **M/s. Arunga**, and on behalf of the respondents by their learned counsel, **Mr. Barongo**.

The objectors submitted that the parcels of land which had been given to some of the beneficiaries before the death of the deceased were not taken into consideration during distribution thereby contravening section 28 (d) of the Law of Succession Act. Therefore, the respondents made a major omission while carrying out the distribution and indeed concealed material facts.

In their rejoinder, the respondents submitted that the grant was confirmed by consent and that the schedule of distribution by the third house dated 29th May, 2009, was filed in court on 17th June, 2009 after being confirmed and signed by the first applicant.

The respondents contended that the confirmation of grant can only be revoked by another consent. They contended that part of the grant has already been executed and that the estate was distributed equally among the three houses of the deceased without any prejudice to any party.

Having considered the application on the basis of the supporting grounds and the submissions by both sides, the opinion of this court is that fraud and concealment of material facts had to be established by the applicants against the respondent if the certificate of confirmation of grant were to be revoked. It was pre-supposed that prior to the confirmation, the parties had the opportunity to discuss any contentious issue and arrive at an agreement prior to moving the court for confirmation. Indeed, this was done and on 18th June, 2009, the parties came to court and consented to the confirmation of grant on the basis of the mode of distribution filed in court on 17th June, 2009.

The said mode of distribution was however, exclusive of the first and second house. It related to the third house only, which explains why the first applicant signed it as a member of the third house. The third house, it would appear, had issues with the distribution of the estate and hence the aforementioned mode of distribution. The first and second house appeared not to have had any issues with regard to distribution. So when the court confirmed the grant, it seemingly called for all the three houses of the deceased.

The relevant certificate of confirmation of grant indicated that the only immovable property availed for distribution was land parcel No. Trans Nzoia/Cherangani/149. Other property included shares and money in the bank. These were the items listed as assets of the deceased as at the time the grant was issued on 9th July, 2004.

The items referred to by the applicants in this application i.e. three acres of land at Gatundu, two acres of land at Cherangani and two acres of land at Londiani did not feature in the petition for grant as

assets belonging to the deceased. They were therefore not available for distribution in terms of section 28 (d) of the Law of Succession Act. In any event, no evidence was led to establish that the said items were given to the named beneficiaries by the deceased having previously been his property. The same position would apply in relation to Trans Nzoia/Cherangani/300 and Marmanet (Melwa Block 1/2044 (Muhotetu).

The second respondent contended and implied that all the aforementioned items belonged to the named beneficiaries including himself in their own right independent of the deceased.

It would therefore follow that the disputed certificate of confirmation of grant was issued without any fraud and/or concealment of material facts by the respondents.

The present application is without merit and is hereby dismissed with costs to the respondents.

Ordered accordingly.

[Read and signed this 31st day of July, 2014.]

[In the presence of M/s. Arunga for objector and Mr. Barongo for petitioner/Respondent]

J.R. KARANJA.

JUDGE