



REPUBLIC OF KENYA

High Court at Kitale

Succession Cause 101 of 1999

HENRY MBOKU AGINI.....DECEASED.

VERSUS

BERNARD NYAGI MBOKU.....APPLICANT.

R U L I N G

Upon the death of the late **Henry Mboku Agini** (herein, the deceased) on the 9th March, 1997 at the age of seventy-nine (79), his son one, Bernard Nyagi (herein, first respondent) took out letters of administration respecting his estate. The grant was issued on **18th August, 2003** but was later substituted for a fresh grant issued on **1st December, 2005** in the names of the first respondent and Gladys Inyoni Anyila (herein, the second respondent). The substitution was prompted by an application dated 26th August, 2005 by the second respondent to have the initial grant revoked.

From the record, the deceased left behind a number of beneficiaries and/or dependants. They included seven (7) sons, twelve (12) daughters, three (3) daughters-in-law including the second respondent and two (2) grandsons who were all expected to share with others the estate of the deceased comprising of several portions of land situated at Nyangori/Gimarakwa, Gambogi market, Naitiri Kitale, Nandi/Kapsengere Tiruki/Tigoi and Kakamega/Tingoi.

On 21st November, 2006, the second respondent applied for confirmation of the substituted grant dated 1st December, 2005. the first respondent protested vide his affidavit of protest dated 27th March, 2007. The protest was considered by the court and dismissed on the 17th February, 2011. Accordingly, a certificate of confirmation of grant was issued on that date. However, the present application for revocation of the grant was filed on 25th May, 2012 by Tom Owaga, Manoah Karega Mboku and Margaret Jendeka (herein, the first, second and third objectors/applicants) who contend that the grant was made by concealment of material facts as four (4) of the beneficiaries were deceased yet they were allocated shares. These were Elizabeth Mboku, Stanley Sura, Rael Mboku and Zacharia Agini.

The applicants also contend that the distribution of the estate was done unilaterally by the respondents contrary to a family agreement and that this matter should be transferred to the High Court in Kakamega as all assets in the estate of the deceased are in Western Province and save the first respondent, all the other beneficiaries live in Western Province such that there was no reason why this matter was filed in this court.

The applicants further contend that traveling and other incidental costs would be cut if the matter is transferred to the Kakamega High Court.

On this last contention and prayer five (5) of the application, let it be pointed out that this matter was filed in this court way back in 1999 and it is only now that the applicants are praying for its transfer to

Kakamega. The application does not appear to have been made in good faith. It is definitely an afterthought intended to delay the expeditious disposal of this matter. In any event this court has the necessary jurisdiction to continue with the case until final disposal. Prayer five (5) of the application must therefore be outrightly dismissed.

The second respondent opposed the entire application on the basis of the facts contained in her replying affidavit dated 14th September, 2012 in which she contends that the application is unmanned and an abuse of the court process and that the applicants and the first respondent are acting in cahoots with the sole purpose of defeating the due process of the court. Further it took over 13 years for the grant to be confirmed and at the moment the process of distributing the estate is on course. The second respondent avers that the estate has been wasted such that the interest of justice will not be served if the grant is revoked.

The second respondent contends that family consultations involving the applicants were carried out prior to confirmation of the grant and that the distribution list prepared by the applicants was a mere afterthought intended to circumvent the process of distribution.

Basically, the dispute here has nothing to do with the entire revocation of the grant issued to the two respondents but with the mode of distribution in terms of the certificate of confirmation issued by the court on 17th February, 2011. Indeed, this matter has been in court for far too long and ought not be delayed any further by applications coming soon after confirmation simply because the parties have disagreed on emerging issues during the process of distribution. There must be an end to litigation and in particular this type of litigation involving family members thereby fanning the emotions that come with such matters and more so through prolonged delay.

It is notable that there has been a previous application for revocation in this matter and this was resolved way back in the year 2005 by consent of the disputants. There has also been a protest to confirmation lodged by the first respondent who is herein accused of acting in cahoots with the applicants herein to defeat the court process. The protest was found by the court to have no merit and was dismissed. It also showed that there is a serious disconnect between the two respondents/administrators which is clearly contributing to the delay in this matter and complicating the process of distribution. If the two cannot work together to ensure equitable distribution of the estate of the deceased among all the beneficiaries, past and present, then it would be within the power of this court to relieve one of them and more so, the first respondent since it is apparent that he is mostly to blame for the delay in the distribution of the estate.

When the grant was confirmed on the 17th February, 2011, the parties were present in court at least through their respective advocates. The confirmation was an approval of the mode of distribution seemingly proposed and agreed by all the relevant parties. This court does not see any good reason to interfere with that mode and if it does, this matter shall become more complicated and remain in court to "eternity".

In any event, the applicants have not shown any evidence of the demise of the alleged beneficiaries and if indeed, the fact is true, then there is nothing to prevent those who have succeeded them to benefit from property lawfully distributed to the deceased beneficiaries.

In sum, this application is without merit. It is an abuse of the court process and a clear attempt to ensure that this matter does not come to an end. Unfortunately for the applicants, this court cannot lay back and watch its process being abused with utmost impunity. The application is dismissed with costs to the second respondent.

Ordered accordingly.

[Read & signed this 12th day of March, 2013.]

[In the presence of M/s. Arunga h/b for Samba for applicant and M/s Munialo h/b for Wanyama for respondent.]

J.R. KARANJA.

JUDGE.