



REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Succession Cause 453 of 2001

IN THE MATTER OF THE ESTATE OF FRANCIS MUCHIRU MBUTHIA

(DECEASED)

WALTER MBUTHIA.....1ST OBJECTOR /APPLICANT

MICHAEL KURIA.....2ND OBJECTOR/APPLICANT

EMILY WANJIRU.....3RD OBJECTOR/APPLICANT

LEAH WANJIKU NJENGA.....4TH OBJECTOR/APPLICANT

VERSUS

JENIFFER WAMBUI.....RESPONDENT

JUDGMENT

The applicant and the respondents in the application dated 15th February 2007 are the joint administrators of the estate of Francis Muchiru Mbuthia. It is a case of one administrator asking the court to revoke the grant made jointly to her and her co-administrator.

Both sides filed affidavits to advance their respective cases. At the hearing of the application, both parties gave oral evidence and were cross-examined. They did not call witnesses.

I have carefully gone through the affidavits filed in the application, as well as the oral evidence tendered by the parties. I have also perused the entire court record. What emerges is that the applicant is unhappy with the portion that was allocated to her in the apportionment pronounced by Lady Justice Rawal, on 31st January 2007. This position is clearly captured in paragraph 4 of the ruling of my brother, Mr. Justice Lenaola, of 20th January 2012.

The grounds set out in support of the revocation application attest to the above. The applicant complains that the grant as confirmed did not conform with the beneficiaries' wishes that the land be divided equally, that the court did not take into account the beneficiaries' submissions and that the proceedings of 31st January 2007 had errors.

It is my considered view that the issues raised in the summons dated 15th February 2007 can only be

taken up in a review or appeal as they touch on the merits of a court decision and the process through which the decision was arrived at. Such matters cannot be taken up in a revocation application. The applicant is inviting me in this application to re-visit the decision of my learned sister Lady Justice Rawal, to either review it or set it aside. I cannot exercise such power on Lady Justice Rawal's decision as Her Ladyship was exercising jurisdiction that was concurrent to mine. That decision can only legally be revisited in a review application properly brought under Rule 63 of the Probate and Administration Rules and Order 44 of the Civil Procedure Rules; or in an appeal against the order properly filed at the Court of Appeal.

Revocation of grant is provided for in Section 76 of the Law of Succession Act. The grounds for seeking such revocation are set out in that provision. Grant will be revoked either because the process of obtaining it was defective or because the administrators obtained the grant fraudulently, or they have failed to diligently administer the estate, or the grant has since become inoperative and useless. The present application is not premised on any of these grounds. The grounds set out in Section 76 have something to do with the administrators or their conduct or their inertia. The grounds have nothing to do with the conduct of the court. A party who is aggrieved by a decision of the court cannot obtain revocation of a grant on the grounds that the court fell into some error in arriving at the decision. The remedy available to a person who is disappointed with a court order or court decision is to appeal it or apply for its review, but not for revocation of the grant.

For the reasons that I have given above, I find no merit in the application dated 15th February 2007. I will dismiss it. Each party shall bear their own costs.

Dated and delivered on this 26th day of April, 2013.

W. MUSYOKA
JUDGE