



REPUBLIC OF KENYA

High Court at Embu

Succession Cause 423 of 2002

IN THE MATTER OF ESTATE OF NYAGA KARUMA..... DECEASED

ANN KANINI NYAGAPETITIONER (DECEASED)

DANSON KARIUKI NYAGA APPLICANT

VERSUS

GAKONO GAKENGERESPONDENT

RULING

A Succession Cause number Embu SPM - No.202/96 was transferred to the Embu High Court and acquired a new number viz; High Court Succession Cause No.423/02. In that file was a confirmed grant in the estate of Nyaga Karuma (late). The grant was confirmed by the Resident Magistrate Mr. V. Wandera vide a Judgment dated 9/7/1999 after hearing a protest filed by Gakono Gakenge and Danson Kariuki Nyaga. Petitioner was Ann Kanini Nyaga.

Danson Kariuki Nyaga on 20/3/2008 filed an application for revocation of the grant vide Misc. Application No.39/08. The registry should not have opened a separate file for the application for revocation. It ought to have been filed in the mother file High Court Succession Cause No.423/02. In this application he raises four (4) grounds viz;

- 1. That the proceedings to obtain the grant were defective in substance.***
- 2. 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.***
- 3. That the grant was obtained by means of an untrue allegation of fact essential in point of law to justify the grant notwithstanding the fact that the allegation was made in ignorance or inadvertently.***
- 4. That the grant has become useless and in-operative through subsequent circumstances.***

Its supported by his affidavit through which he states that the land has been subdivided. And he was dissatisfied by the confirmation. The Respondent who was Gakono Gakenge filed a replying affidavit confirming the distribution of the estate.

Both Counsels agreed to file written submissions in respect of this application dated 20/3/2008. Mr Mutahi submitted that the Respondent had failed to disclose to the Court that their late father had subdivided the land into seven (7) portions and mutation forms had been prepared with consent. And that

the Respondent had altered their father's mode of distribution.

The late Mr. Utuku for the Respondent had filed his submissions saying the Grant was confirmed in the Applicant's presence, and there was no supporting evidence of the grounds.

As indicated above, the Applicant had participated in the proceedings that led to the confirmation of the Grant. The Protestors were Danson Kariuki Nyaga and Gakono Gakenge. They were heard and a Judgment was delivered by the learned trial Magistrate. The issue he is raising about his father having distributed the estate prior to his death was raised by him in the lower Court but was overruled. Hence a decision was made. If he was dissatisfied then he ought to have appealed against that decision and not file an application for revocation. There is nothing he has availed to the Court which was not placed before the trial Court. Secondly Gakono Gakenge was a Protestor just like him. The administrator was one Anne Kanini Gakenge who is now deceased. There is no evidence to show that the Respondent altered the alleged mode of distribution. And in any event there is no mode of distribution presented that was adopted by the Court. The learned trial Magistrate used his judicial discretion to distribute the estate according to his findings.

My finding therefore is that the Applicant was actually dissatisfied with the Judgment of the Court on distribution. The Court even explained to them that any aggrieved party had a Right of Appeal within 30 days. He failed to exercise that Right of Appeal. The estate has been distributed.

I do find none of the grounds raised proved to make me grant the orders sought. Application is dismissed. Each party to pay his own costs.

Right of appeal within 30 days.

DATED, SIGNED AND DELIVERED AT EMBU THIS 16TH DAY OF MAY 2013.

H.I. ONG'UDI

J U D G E

In the presence of;
Mr. Mutahi for Applicant
Respondent
Njue – C/c