



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT GARISSA

SUCCESSION CAUSE NO. 9 OF 2013

IN THE MATTER OF THE ESTATE OF MUSYIMI NGINDU (DECEASED)

BEATRICE KITHUMBA MUSYIMI.....1ST APPLICANT

STEPHEN KILONZO MUSYIMI.....2ND APPLICANT

VERSUS

MUNYAMAI MUSYIMI.....RESPONDENT

RULING

The two applicants have moved this court by way of Chamber Summons based on Section 47 of the Law of Succession Act and Rules 59 (5) and 73 of the Probate and Administration Rules. They are seeking orders that:

- a. This application be certified urgent and be heard exparte in the first instance.
- b. A conservatory order do issue to restrain all the parties and beneficiaries of the estate of the deceased from wasting, alienating, sub-dividing or in any other was interfering with the estate of the deceased pending the hearing and determination of the is application.
- c. A conservatory order do issue to restrain all the parties and beneficiaries to the estate of the estate of the deceased from wasting, alienating, sub-dividing or in any other way interfering with the estate of the deceased pending the hearing and determination of the Summons for Revocation of the Grant filed herein dated 17th May 2013.
- d. Costs of this application be in the cause.

Prayers (a) and (b) of this application were granted by this court on 24th July 2013.

The application is supported by an affidavit sworn by one Stephen Kilonzo Musyimi. In summary form the deponent is stating that he has filed a revocation of the grant and if the estate of the deceased is not preserved, there is danger of interfering with it thereby defeating the purpose of the application to revoke the grant.

Counsel for the applicant has filed written submissions in which he states that the proceedings in the lower court did not conform to the provisions of section 40 of the Law of Succession Act due to non-disclosure of the material fact that the deceased was polygamous; that the purported distribution of the estate by elders amounts to interfering with the estate; that by dint of section 76 of the Law of Succession Act a magistrate's court has no jurisdiction to revoke the grant and therefore this court ought to grant conservatory orders pending hearing of the application for revocation of the grant.

On the other hand, the respondent states that the grant was issued to her and confirmed after all procedure was followed and that the property she sought letters of administration are the ones given to her by the deceased and not the property allocated to the applicant; that the orders sought are blanket because they do not disclose the parties and beneficiaries; that the estate of the deceased is also not disclosed; that the applicant has never sought conservatory orders up to now.

In addition counsel for the respondent has submitted that the application lacks merit; that the deceased had subdivided his land before he died and each of the wives settled on separate lands; that the parcels of land being destroyed have not been specified.

I have considered this application and the supporting documents from both sides. None of the parties have specified the property under dispute. What is not disputed is the fact that the deceased was polygamous and that he died intestate. There is evidence that a grant of letters of administration intestate had been issued and confirmed. What I would have expected is the details and all particulars of what happened in the lower court. This has not been forthcoming and it seems that both parties are being economical with information.

At this stage, this court cannot get into the merits or otherwise of the application for revocation of the grant. To me, it is proper to grant the orders sought to enable time to interrogate all the issues in this matter. Taking into account all the issues raised in this matter, I hereby allow the application dated 23rd July 2013 and grant conservatory orders to restrain all the parties and beneficiaries to the estate of the deceased herein from wasting, alienating, sub-dividing or in any way interfering with the estate of the deceased pending the hearing and determination of the application for Revocation of the Grant filed on 17th May 2013. The costs of this application shall be in the cause. I make orders accordingly.

Dated, signed and delivered this 17th day of December 2013.

S.N.MUTUKU

JUDGE