



REPUBLIC OF KENYA

IN THE HIGH COURT

AT NAIROBI

MILIMANI LAW COURTS

Succession Cause 1447 of 2011

IN THE MATTER OF THE ESTATE OF KIMANI WANJIE--(DECEASED)

RULING

The applicant in the Summons for Revocation of Grant dated 18th July 2011 prays that the Temporary Grant of Letters of Administration intestate issued to the respondent by the Senior Principal Magistrate's Court, Kiambu, on 30th March 1995 be revoked on the following grounds:-

1. ***THAT the proceedings to obtain the Certificate of Confirmation of Grant are defective in substance.***
2. ***THAT respondent had not included all the deceased's wives and one ESTHER WAMBUI KIMANI.***
3. ***THAT the Chief Magistrate at Kiambu had no jurisdiction to hear this matter, as the value of the estate of more that Kshs.12,750,000/=.***
4. ***THAT all the dependants did not sign the Form No. P&A 5 and specially ESTHER WAMBUI KIMANI has been left out in these proceedings.***
5. ***THAT the assets owned by the deceased was KOMOTHAI/GATHUGU/306 & 1132 originally 29 and shares in GATATHA FARMERS CO. LTD. in Kiambu.***
6. ***THAT ESTHER WAMBUI KIMANI was excluded as a beneficiary of her father estate and she is not married; is illiterate and she has children.***
7. ***THAT the respondent had misled the family that the petition be filed at Kiambu Court the reason being that he knew the magistrate who heard our case.***
8. ***THAT the respondent resides at Nairobi and has sold the family properties and has borrowed a loan using the estate's property.***
9. ***THAT the letters of administration be issued to the applicant alone.***

10. THAT the respondent and his friend DAVID NJURUBA KARANU among others had interfered with proceedings at Kiambu Court.

11. THAT the Form No. P&A 5 was underlined by the respondent both sides so as not to insert all the deceased properties and all the dependants.

He has filed a 14 paragraph affidavit to support the summons.

On 10th October 2011 the respondent filed a 20 paragraph replying affidavit which he annexed not only a copy the ruling of the then Senior Principal Magistrate, F.N. Muchemi (now Judge of the High Court) but also a ruling by the Hon Mr. Justice Okubasu dated 9th June 2000 dismissing the applicants application to review a judgement of 12th May 1999 dismissing the applicants' appeal against the lower courts judgement, and a copy of yet another ruling by the Hon. Lady Justice Rawal of 7th December 2007, dismissing the applicants' suit against the respondent (being H.C.C.C. No. 1309 of 2004) on the grounds that the issues raised in the suit were res judicata.

The honourable lady Justice Rawal considered both the lower court and the High Courts' judgements and found that there was proof that

“the issue of ownership of the suit land was heard and determined...”

Directions were given that the matter proceeds by way of viva voce evidence on the basis of the affidavit filed. The applicant did not refer to the High Court decisions at all while giving his testimony despite the fact that he had been served with the replying affidavit to which they were annexed. He had not filed any reply to the same either.

It was in the course of recording the respondents' testimony that the two decisions were brought to the force. On perusing the same the court found it unnecessary to continue taking the evidence being of the view that prima facie, the two decisions impacted on these proceedings in a manner that was likely the matter to an end.

I have read the said decisions and carefully considered the findings therein. I agree with the findings in the two High Court decisions and associate myself fully with the sentiments of the court, to the effect that the applicant appears not keen to have this litigation brought to an end. This was found to have been the case when he brought about the review proceedings in H.C. Civil Appeal No. 285 of 1998.

Nothing demonstrates the applicants the intent further than the filing of these proceedings 11 years after Justice Okubasu's decision despite Justice Rawal's judgement of 7th July 2007 which he never appealed against. Relying on the same authorities as were considered in the latter decision. I find that the proceedings herein are res judicata.

The same are hereby struck out as being a gross abuse of the process of the court. Accordingly the Summons for Revocation of Grant dated 18th July 2011 is hereby dismissed with costs to the respondents.

DATED, SIGNED and DELIVERED at NAIROBI this 14th DAY OF JUNE, 2012.

M.G. MUGO

JUDGE

In the presence of :

for the applicant

for the respondent

