



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NYERI
SUCCESSION CAUSE NO. 929 OF 2009
IN THE MATTER OF THE ESTATE OF KEZIAH NJAMBI GATHUNGU (DECEASED)
AND
JACKSON NJUGUNA GATHUNGU
JANE WAIRIMU GATHUNGU PETITIONERS
VERSUS
GRACE WACHUKAOBJECTOR
JUDGMENT

The grant of letters of administration intestate in respect of the estate of Keziah Njambi Gathungu, deceased, was made in the joint names of Jackson Njuguna Gathungu and Jane Wairimu Gathungu, hereinafter referred to as the Petitioners. The aforesaid grant was confirmed on 28th September 2009. Grace Wachuka, hereinafter referred to as the Objector took out the summons dated 14th October 2009 in which she sought for the following orders:

- a. That the court be pleased to remove and bring before it Othaya Succession cause No. 21 of 2008.***
- b. That the grant issued on 9.3.2009 and confirmed on 28.9.2009 in the above succession cause be revoked/annulled.***
- c. The costs of this application be provided for.***

The Petitioners opposed the summons by filing the replying affidavit of Jackson Njuguna Gathungu sworn on 5th March 2010. This court gave directions for the summons to be determined by affidavit evidence and by written submissions.

I have considered the grounds set out on the face of the summons plus the facts deponed in the affidavits filed for and against the application. I have further considered the rival submissions. The Objector is of the view that the grant should be revoked because the same had become useless because the two administrators cannot agree. The Objector said she did not consent to the schedule of distribution which did not embrace the deceased's wishes nor their intentions of confirming the grant. The objector

pointed out that the deceased had obtained not only a consent to subdivide the estate but that he had also engaged a surveyor who prepared the mutation forms for three parcels as she had also applied for consent to transfer by way of gift the three parcels to the respective beneficiaries but died before completing the process. The Objector alleged that the deceased's wish cannot be realized because of the fraudulent and selfish determination of the 1st Petitioner.

The Petitioners urged this court to dismiss the application because the Objector has admitted that she and other beneficiaries were present in court and had answered in the affirmative that they had agreed on the schedule of distribution. The Objector was challenged to substantiate the allegations of fraud or misrepresentation complained of. The Petitioners averred that the application was filed in bad faith.

I have carefully considered the rival submissions. The Objector has accused the Petitioners of fraud and misrepresentation. She has also alleged the grant was confirmed on the basis of a mistake capable to render the process defective. It is also alleged that there is no fairness in the distribution. It is apparent from the material placed before this court that the Objector had approved the schedule of distribution by appending her signature. That is why she did not file an affidavit of protest. She even attended court for the confirmation of grant. I am satisfied that the grant was duly confirmed. There was no proof of fraud, mistake nor misrepresentation on the part of the Petitioners.

In the end, I see no merit in the summons. It is dismissed with no order as to costs.

Dated and delivered this 25th Day of February 2011.

J.K. SERGON
JUDGE

In open court in the absence of parties with notice.

J.K. SERGON
JUDGE