



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT ELDORET
SUCC. CAUSE NO. 194 OF 1997

IN THE MATTER OF THE ESTATE OF THE LATE NYANYOR ARAP MEGO – DECEASED

BETWEEN

DAVID KIPRUTO NGENY

RACHEL RUTTO

RUTH JEMELI.....APPLICANTS

AND

SARAH JEBET

LILIAN CHEPCHIRCHIR ROTICH ADMINISTRATRIXIES

RULING

The applicants describe themselves as objectors. They come to this court under the provisions of Rule 63 and 73 of the Probate and Administration Rules, Order 44 Rule 1 of the Civil Procedure Rules and Section 143 of the Registered Land Act seeking orders that the court reviews and set aside its orders made on 21st July, 2010 and 12th March, 2010 and that the register of the land parcel known as NANDI.CHEPKONGONY/231 be rectified by deleting the entries made on 10th May, 2010 and 2nd June, 2010. Further that the applicants be accorded leave to lodge protests against the summons for confirmation of the grant dated 18th February, 2010 for hearing inter parties. These are prayers (3), (4) and (5) of the application. Prayers (1) and (2) are already spent.

An affidavit dated 23rd July, 2010 deponed by the first applicant on his own behalf and that of the second and third applicants sets out the grounds and facts in support of the application.

The application was argued on behalf of the applicants by the learned counsel **Mr. Barasa**. He relied on the aforementioned supporting affidavit and submitted that the applicants purchased the subject land from the administrators of the estate of the deceased but later the said administrators obtained an order dated 21st July, 2010 to the effect that the distribution of the land be undertaken under the supervision of the O.C.S. Nandi Hills Police Station. Further, an application dated 13th July, 2010 was never served upon the applicants. The orders issued pursuant to the application offended Rule 49 of the probate and Administration Rules in that it was made by way of Chamber Summons instead of summons.

Learned Counsel went on to submit that since there was non service of the application upon the applicants it would be prudent for the orders emanating from the application to be set aside as the applicants are in occupation of the suit property whereas the orders seek their eviction therefrom.

It was the learned counsel's contention that the applicant's did not collude with the administrators to fraudulently purchase the land and that they were innocent purchasers with the knowledge that the title was clean. Further the existence of other dependants was not brought to the attention of the applicants.

In opposing the application, the respondents relied on their replying affidavit dated 27th July, 2010. They argued through the learned counsel, **Mr. Kipnyekwei** that the applicants are not objectors as contained in the Law of Succession Act as there are no objection proceedings. Further, the applicants chanced into this matter when they filed a summons for revocation of grant vide an application dated 19th September, 2009. Subsequent purchasers of the suit property were not brought to the attention of the administrators but went on a selling spree of the estate property.

The respondents went on to argue that the applicants did not purchase the land from the deceased and cannot therefore be objectors. They (applicants) cannot also attempt to determine who should benefit from the property.

It was contended by the respondents that the applicants have no legitimate claim to the estate of the deceased as they never filed any objection proceedings. Further, the application for confirmation of the grant was allowed and on 20th May, 2010 titles were issued.

The foregoing arguments by both the applicants and the respondents have been given due consideration by this court.

As noted hereinabove, at this stage, prayers (3), (4) and (5) of the application are the most significant. Prayer (3) is for the review and/or setting aside of the orders made by the court on 21st July, 2010 and 12th March, 2010.

From the record, there is no order made on 12th March, 2010 that was the date when the summons for confirmation of grant dated 18th February, 2010 were issued.

Perhaps, the applicants meant the order made on 15th March, 2010 confirming the grants issued on 19th January, 2009 and 5th February, 2010. There being no objection from anybody, the grants were duly confirmed on that 15th March, 2010. The respondents herein were thus confirmed as the administrators of the estate of the late Nyanyor Arap Mego without any objection from the applicants herein. The applicants could not therefore be described as objectors at the time. It may however, be noted that on the 19th September, 2007, the applicants filed summons for revocation or annulment of the grant on grounds that the court was not notified of the subsequent purchasers of the suit parcel and the expected subdivision to the purchasers. The application was to be heard with the applicants being treated as objectors. They were indeed objectors at the time. However, the record shows that their objection was not heard and concluded. Dates were taken for hearing of the objection but nothing progressed. The application/objection was left hanging. Instead, an application dated 12th May, 2008 was filed by the second respondent and another seeking the revocation or annulment of the grant issued on the 21st October, 1999 to one Everlyne Cheboo Tuiyo and one Selly Jepkorir Tuiyot. These two were said to be the wife of the deceased Nyanyor Arap Mego.

It is the same grant that the applicants herein sought to nullify by their application of the 19th September, 2007 which appears to have been overtaken by the respondent's application dated 12th May, 2008. The said application dated 12th May, 2008 was allowed by consent on the 7th July, 2008.

The grant issued on the 21st October, 1999 was therefore revoked with the result that Everlyn Cheboo Tuiyo and Selly Jepkorir Tuiyot were removed as the administrators of the estate of the deceased Nyanyor Arap Mego and substituted with Lilian Chepchirchir Rotich (2nd respondent herein) and Ibrahim Kiplimo Chepkwony.

Ibrahim Kiplimo was later substituted for Sarah Chebet (1st respondent herein) and on the 15th March, 2010 the grant issued to both first and second respondents was confirmed without any objection. It is instructive to note that the objection raised by the present applicants under their application of 19th September, 2007 related to the grant issued to the former administrators which grant was revoked on the 7th July 2008 on the basis of the objection raised by the second respondent under the application dated 12th May, 2008. The applicants' application dated 19th September, 2007 was invariably overtaken by events.

The grant issued to the respondents remained the only valid grant and after its confirmation on the 15th March, 2010 a certificate of confirmation was issued on the 19th April, 2010. Thereafter on the 13th July, 2010 the respondents sought the assistance of the police in effecting the distribution of the subject estate. Necessary orders were granted by the court on the 21st July, 2010. The respondents indicated to this court that titles respecting the estate have since been issued. This means that the order made by the court on 21st July, 2010 has already been effected.

From all the foregoing facts it is apparent that prayer (3) of the applicant's application cannot be granted.

Firstly, the confirmation of grant issued to the applicants was effected without any objection from the applicants.

Secondly, since the estate has already been distributed in accordance with the mode of distribution dated 18th February, 2010 and since the assistance of the police has already been given to effect the distribution, the court order made on 21st July, 2010 cannot be revoked and/or set aside as it is already spent. It would follow therefore that prayer (4) cannot also be granted.

As for prayer (5), it is a misconception. The material grant was confirmed without objection from the applicants. They cannot come at this late hour to ask for inter parties hearing of the appropriate summons for confirmation of grant.

Considering that the estate has since been distributed after a long and tedious process, it would do more harm than good were this court to order that the confirmation of the grant be set aside and that the summons for confirmation be heard inter parties. In any event, there was no objection to the summons to facilitate any inter parties hearing.

Although it is easy to sympathize with the position the applicants find themselves, in their remedy lies elsewhere against those who sold them portions of the estate property without the necessary authority.

In the end result, this application is dismissed in its entirety with costs to the respondents.

J.R. KARANJA
JUDGE

(Read and delivered this 16th day of February, 2011 in the presence of Mr. Barasa for applicants/objectors)

Order; Leave to appeal granted to the applicants as applied.

J.R. KARANJA
JUDGE