



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU
SUCCESSION CAUSE NO. 205 OF 1997
IN THE MATTER OF THE ESTATE OF THE LATE MWANGI KAMAU MUIRURI

PETER MBUGUA KIMEMIA.....OBJECTOR

VERSUS

KONDE MWANGI
KAMAU.....PETITIONER

AND

KARANJA MBUGUA & CO.
ADVOCATES.....APPLICANT

RULING

Mwangi Kamau Muiruri, (referred to herein as the deceased) died on 27/1/1994. On 29/9/1997 grant of letters of administration intestate were issued to Konde Mwangi Kamau, a son to the deceased. By a Chamber Summons application dated 28/2/06, Peter Mbugua Kimemia, a son to the deceased, applied to have the grant issued to Konde Mwangi Kamau revoked or annulled for reasons that the same was obtained fraudulently by making false statements and concealing material information. On 20/12/07 J. Musinga revoked the said grant. On 17/6/2009, Peter Mbugua Kimemia filed another summons pursuant to Sections 59 and 73 of the Probate and Administration Rules seeking two orders:-

1. That fresh grant of letters of administration be given to him jointly with his brother, Konde Mwangi Kamau;
2. That the title obtained by Konde Kamau in respect of the late Mwangi's land Reference No. Nyandarua/Mawingu/573 pursuant to the grant of letters of administration given on 29/9/1997 be cancelled for proper administration of the estate.

This application is premised on the ground that the grant that had been issued herein was revoked on 20/12/07 and there is need for fresh grant for purposes of administering the estate. In his affidavit dated 16/4/09, Peter Mbugua Kimemia deponed that the land, the subject of the estate had been transferred to the respondent following the confirmation of the grant on 29/9/1997. That the transfer was effected on 12/1/1999 as evidenced by a copy of the Green Card (PMK-2). Konde Mwangi opposed the application and swore an affidavit dated 4/11/2010 in which he deponed that by the time of his father's death, the applicant owned this parcel of land Plot 336 Sabugo Settlement Scheme measuring 66 acres and Nyandarua/Mawingu 573 measuring 18 acres. He deponed that the applicant has been living on Plot 336 Sabugo and has refused to share the land with his siblings despite the father's will that he does so. He exhibited 2 documents 1(a) and (b) as being the father's will. He denied having transferred Plot Nyandarua/Mawingu/573 to himself alone as the father had sold some of it and he had to transfer what was sold to the four purchasers.

The respondent cannot claim at this stage that the grant of letters of administration were not obtained fraudulently. The court found as a fact that the applicant had concealed material facts from the court including failing to disclose that the applicant was his brother and a beneficiary to the deceased's estate. He cannot be heard to depone that the applicant is dishonest because he already demonstrated his dishonesty by withholding material facts from the court.

The respondent depones to the father having left a will as to his wishes but whatever was exhibited by the respondent is illegible and it seems to be written in the Kikuyu language and with no translation. It is not of any help to this court.

By annexure PKM II, the Green Card, it is evident that the respondent had transferred the land in issue to his name. That was done before the revocation of grant. Even though the respondent claims to have subdivided it and given portions to purchasers that was done without the knowledge of the other beneficiaries of the deceased's estate. I find no good reason why the respondent is opposed to the estate being jointly administered. If Plot 336 Sabugo belongs to the deceased, the respondent should have included it in the deceased's assets so that it can also be distributed. Even if he did not do that, all is not lost because he can still have it included for distribution.

After considering the rival affidavits and submissions, I find no good reason why the applicant cannot be made a joint administrator of the deceased's estate with the respondent. Each of them needs to safeguard his own interests. When the respondent had the chance to administer, he did it to the exclusion of the applicant and their other siblings. I find that it is necessary that both the applicant and respondent be joint administrators. The grant having been revoked, the subsequent orders to the revoked grant were swept with it and I direct that the title issued to the respondent following the revoked grant be cancelled so that the estate can be distributed afresh and equitably. I grant the prayers with costs being in the cause.

DATED and DELIVERED this 11th day of February, 2011.

R.P.V. WENDOH

JUDGE

PRESENT:

N/A for the applicant.

Konde for the respondent.

Kennedy – Court Clerk.