



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KAKAMEGA
SUCCESSION CAUSE 7 OF 2003

IN THE MATTER OF THE ESTATE OF EVANSON INGUTIA INDONGOLE (DECEASED)

JENERPER OKUTOYI INGUTIA.....PETITIONER/APPLICANT

VERSUS

PETER SAGINI INGUTIA.....OBJECTOR/RESPONDENT

RULING

1. Apparently after directions were given that the Applications dated 29th September 2010 and 18th November 2010 be heard together by way of Affidavits and Ruling was to be delivered on 6th April 2010, the file herein was taken back to the Registry and I regret the delay in bringing it to my attention long after my transfer from the High Court at Kakamega. Apologies are certainly due to the parties for the two month's delay in delivering it.
2. In any event, before me are two applications; I propose to deal with the one dated 18th November 2010 first. It seeks orders under Section 67 and Section 71 of the Law of Succession Act, Cap.160 Laws of Kenya as well as Rules 40, 47 and 63 of the Probate and Administration Rules for orders that a fresh grant of Letters of Administration be issued to Peter Sagini Ingutia, consequent upon the refusal by Jenipher Okutoyi Ingutia, to return the original grant which was revoked on 3rd June 2010.
3. I see no response to that Application and in any event, it is warranted for the reason that on 3rd June 2010, Chitembwe J. ordered that the grant issued to Jenipher Okutoyi Ingutia on 12th March 2003 be revoked and a fresh one issued to Peter Sagini Ingutia.
4. By refusing to return the original grant, Jenipher Okutoyi Ingutia is in contempt of those orders. In any event, there being an order of this court to issue a fresh grant to Peter Sagini Ingutia, I shall forthwith order the Deputy Registrar of this court to implement that decision by having a fresh grant issued pursuant to the orders of Chitembwe, J. aforesaid.
5. Turning to the Application dated 29th September 2010, it is premised on the provisions of Section 40 of the Law of Succession Act and Rule 63 of the Probate and Administration Rules. It seeks orders that titles Nos.Butsotso/Esumeyia/637 and 647 do revert back to the names of the deceased and distribution amongst all the beneficiaries to be conducted thereafter.

6. Reading the Supporting Affidavit sworn on 29th September 2010 by Jenipher Okutoyi, it seems to me that in fact what she seeks are orders to set aside or review the decision of Chitembwe, J. delivered on 3rd June 2010. The learned Judge had inter-alia rendered himself as follows;

“In her Replying Affidavit, the Petitioner states that the two parties herein do not talk to each other and it will be futile to issue a grant to both of them jointly. The registration of the Petitioner as Proprietor of Plot No. Butso/Esameya/647 to be reversed forthwith and the same to be registered in the name of the Applicant, Peter Sagini Ingutia who should in turn distribute it to his brothers and sisters from their mother, Roselida Khaeshia Ingutia. The respondent to continue being registered as Proprietor Plot No. 637 and to hold the same in trust for her children. Each party to meet his own costs.”

7. It is Jenipher’s case that her deceased husband never distributed his estate prior to his death and that the distribution made by Chitembwe J. was unfair and unlawful. That the proper thing for the Judge to have done was to order that the distribution be done in accordance with Section 40 of the Law of Succession Act since the deceased was a polygamous man.

8. It is also her case that Peter Ingutia has taken advantage of the learned Judge’s orders to allocate himself a bigger chunk of land than his brothers and has therefore obtained an added advantage through the said decision.

9. In a Replying Affidavit sworn on 8th February 2010, Peter Ingutia aforesaid has deposed that his deceased father had allocated titles No. 637 and 647 to his two houses respectively and Chitembwe J. merely followed the wishes of the deceased. That the Application was without merit and should be dismissed.

10. On my part, I think that the Application dated 29th September 2010 is misguided. I say so, with respect, because firstly, Chitembwe J. delivered his judgment of 3rd June 2010 after taking oral evidence and after each party had placed its case before him on the mode of distribution of the deceased’s estate. In the end, he reached a decision that the two houses of the deceased intestate should occupy a separate parcel of land from each other.

11. Jenipher is dissatisfied with that order and seeks a redistribution and seeks invocation of Section 40 of the Law of Succession Act so that the whole estate is distributed equally among all the children of the deceased and herself.

12. Dissatisfaction is not per se a ground for an order of review or setting aside or redistribution of the estate. Cogent grounds must be brought forth and when the Application before me seeks a different decision than the one already on record, one would expect serious grounds to be raised to overturn it. In fact, the answer to the Application is that the issues should now be pursued on Appeal and not by seeking a contrary decision from the same Judge or a judge of concurrent jurisdiction as that would bring the system of justice to disrepute.

13. I say so because I am being asked to sit on Appeal from a decision made by a Judge of equal rank.

14. In any event, if what is sought is a review of that decision, none of the grounds envisaged by order XLIV of the old Civil procedure Rules have been invoked and I see no reason to interfere with that decision.

15. That being the case, the Application dated 29th September 2010 is dismissed with costs and the one dated 18th November 2010 is allowed as prayed.

16. Orders accordingly.

I. LENAOLA
JUDGE

DELIVERED, DATED AND COUNTER-SIGNED BY L. KIMARU, JUDGE AT KAKAMEGA
THIS 4TH DAY OF JULY, 2011

L. KIMARU
JUDGE