



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT EMBU

SUCCESSION CAUSE NO. 236 OF 2011

IN THE MATTER OF THE ESTATE OF NJUE NGONDI –DSD

AND

(IN THE MATTER OF RUNYENJES SRMCC SUCCESSION CAUSE NO. 56 OF 2009)

EDWARD IRERI..... APPLICANT

VERSUS

LAURENZIA NJOKA NJUERESPONDENT

AND

SALESIO MURIUKI BERNARD.....INTERESTED PARTY

R U L I N G

An application by way of summons under Section 76 of the Law Succession Act (Cap 160) and rule 44 of the Probate and Administration Rules was filed by the Applicant seeking the revocation of the confirmed grant issued on 26th May 2011 to the Respondent in respect of the estate of Njue Ngondi. It is alleged that the grant and confirmation were obtained fraudulently by the making of a false statement and the concealment of material facts. It was further alleged that the grant was obtained by means of untrue allegation of facts.

From the supporting affidavit of the Applicant and the replying affidavit of the Respondent and Salesio Muriuki Bernard, respectively, the deceased was married to 3 wives namely: Adere Cianda (deceased), Flora Ciamwari (deceased) and the Respondent. Adere and Flora had 6 children each and the Respondent has 7 children. The Applicant is from the house of Adere and Salesio is from the house of Flora. The deceased died on 7th July 2008 leaving 3 parcels of land as follows: Kyeni/Mufu/2780, Kyeni/Kigumo/4509 and Kyeni/Kigumo/4508. The Respondent successfully petitioned the Senior Resident Magistrate's Court at Runyenjes for letters of administration. The letters were confirmed on 26th May 2011. The confirmation was subsequent to the receipt of oral evidence from all the parties and their witnesses. The trial court gave each child of the deceased an equal share in parcels 2780 and 4509. the Respondent got 0.681 of an acre in 4509 when each child was give 0.227 of an acre and 0.25 of an acre in 2780 when each child got 0.44 of an acre. Njau Njue Ngondi is one of the children of Flora. He was given the whole of 4508 on the basis that he had purchased the same from the deceased before death.

The trial court was required under Section 71 (2) of the Act to specify all the persons beneficiary entitled to the estate and to indicate their respective shares. This is what it apparently did. The Applicant claims that the deceased had before his death given him parcels 4508 and 4509 in 1967 and that since then he has lived thereon with his family and that he had extensively and substantially developed the same. The other allegation was that the estate of the deceased was beyond the pecuniary jurisdiction of

the trial court. No valuation of the estate was annexed and there is no indication that the issue of jurisdiction was raised before the trial court. Regarding the issue of the 2 parcels, it would appear that the Applicant was not able to persuade the trial court with his claim. The court found the parcels belonged to the estate of the deceased and were consequently available for distribution to the beneficiaries. If the Applicant was aggrieved by that decision he ought to have appealed.

My preliminary view is that this application is not the forum for the resolution of the grievances of the applicant. This is why I consider the present request for stay pending the resolution of the quest for revocation meritless. It is hereby dismissed with costs.

DATED AND SIGNED AT BUNGOMA THIS 28TH DAY OF SEPTEMBER 2011

**A.O. MUCHELULE
J U D G E**

DELIVERED AND SIGNED AT EMBU THIS 19TH DAY OF OCTOBER 2011

**H.ONG'UDI
J U D G E**

JUDGE