



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

SUCC. CAUSE NO. 502 OF 2006

IN THE MATTER OF THE ESTATE OF SELLAH JEBIEGON MURERE - DECEASED

- AND-

IN THE MATTER OF AN APPLICATION BY – THOMAS KIBITOK & EUNICE JAMAIYO –PETITIONER/RESPONDENTS

AND

IN THE MATTER OF: JOHNSON KIPSANG MURERE & NAUMY JEBIEGON KEMBOI – OBJECTOR/APPLICANT

RULING:

The application before me is by way of summons under Section 45 of the Law of Succession Act, rule 49 and 73 of the Probate and Administration Rules. Pending hearing are prayers (d) and (e) as prayers (a) (b) & (c) are spent.

Prayer (d) & (e) seeks for an order that title **NANDI/KAPSENGERE/1288 & 1289** be annulled and the distribution of the original land **NANDI/KAPSENGERE/49** be done in accordance with the ruling delivered on the 11th of February, 2011. It also seeks for costs of the application.

The application was based on the affidavit of **Johnson Kipsang Murere** on the grounds that land parcel number **NANDI/KAPSENGERE/49** was the subject matter of the objection; that the petitioner herein had subdivided land parcel into **1288** and **1289** using a grant that has since been revoked; the titles are in the names of the petitioner and one **Julius Atuga** a purchaser; the said grant was annulled and the estate distributed afresh in the court's ruling of 11th February, 2011.

The application was opposed by the petitioner in grounds of opposition dated 10th March, 2011 as follows:-

1. That the application is an abuse of the court process.
2. That the application lacks merit and is frivolous and scandalous.
3. That the applicant lacks capacity to bring the present proceedings as land Parcel number **NANDI/KAPSENGERE/49** no longer exists.
4. The applicant's application does not comply with the requirements of Cap 160 specifically Section 93 thereof.

I have considered the submissions by the rival parties. The issue for determination in my view is the fate of two parcels of land **NANDI/KAPSENGERE/1288 & 1289** in view of the court ruling of 11th February, 2011 and whether or not the court can revoke the said titles and order for reinstatement of title number **NANDI/KAPSENGERE/49**.

On the 14th of July, 2010 this court revoked the 2 grants obtained in this estate unprocedurally and appointed fresh administrators to the estate.

On the 11th of February, 2011 following affidavits on mode of distribution by **Johnson Kipsang Murere**, on one side and **Alice Jeptanui, Johnson Kipsang Murere, Thomas Kibitok, Eunice Jamaio, Stephen Kiplagat Barno and Joseph Kipngetchi** jointly; this court distributed the estate based on the two affidavits.

The net effect of the court order effect was that the earlier grants were revoked meaning that any distribution under them were null and void, and therefore title numbers **NANDI/KAPSENGERE/1288/1289** obtained vide the revoked cancelled and or grants had to be revoked. They must go with the revoked grant.

The effect of the said cancellation was to reinstate the title number **NANDI/KAPSENGERE/49** and have it in the name of administrators as appointed on the 25th of May, 2010 namely; **Johnson Kipsang Murere, Thomas Kibitok Murere and Eunice Jamaio Murere**. The new administrators ought now to redistribute the same as directed by the court on 11th February, 2011.

The objection is misplaced and mischievous as all the parties participated in the objection proceedings and are aware of the court's ruling/order which still remains in force and has not been reviewed or appealed against.

Orders are granted with costs.

DATED AND DELIVERED THIS 4TH DAY NOVEMBER, 2011.

**ALI-ARONI
JUDGE**

In the presence of:

..... present for defendant/petitioner

..... present for objectors/applicant