



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MERU Succession

Cause 148 of 2003

IN THE MATTER OF THE ESTATE OF M'MUNGANIA alias MUNGANIA IRINGO (DECEASED)

JAMES MUTHURI MUNGANIA PETITIONER/APPELLANT

RULING

James Muthuri Mungania is the administrator of this estate. The deceased died intestate. By an application dated 17th January 1995, he sought confirmation of grant and in so doing sought to distribute the estate in accordance with an agreement that had been reached between 8 beneficiaries of the deceased estate. The grant was confirmed in those terms on 15th May 1995. The administrator has now moved the court by a chamber summons dated 4th September 2007. In that chamber summons, he seeks that the court would vary or amend the grant issued on 15th May 1995. To that end, he seeks that the court will cancel all the titles that have been issued following the confirmation of grant. The grounds which support that application are:-

- (a) *That there are some beneficiaries who are left out during distribution and they have filed suits against the petitioner***
- (b) *The beneficiaries are also claiming land from the petitioner which does not form part of the estate.***
- (c) *That this application is necessary to enable put this family (sic) wrangles at rest.***

In the supporting affidavit, the applicant stated that the deceased had 13 beneficiaries and he proceeded to list them down. Out of the thirteen, five of them are deceased. He reiterated in his affidavit that some of the beneficiaries were left out when the distribution took place. As a result of that, he said that he had been sued by such beneficiaries and in one of those cases they sought that they would be awarded the deceased land. In the other suit, the beneficiary alleges that the sub division on the ground failed to be in accordance with the confirmed grant. The applicant in his affidavit further stated that during the lifetime of the deceased, he had paid off a loan which was secured by one of the properties of the deceased. As a result, he sought that he would be awarded fifteen acres of parcel number *NYAKI/GIAKI/101*. He however said that he would not insist on getting the fifteen acres but that he would accept ten acres instead. In his affidavit, he proceeded to set out how the estate properties should be re-distributed if the application is allowed. The basis of seeking the orders before court is that the administrator is entitled to ten acres on parcel number 101 rather than the five acres that he got at confirmation of grant. The administrator, must in my view, have had knowledge of the grounds which he now seeks to use to have the grant amended and titles to the beneficiaries cancelled. It is not clear what caused the applicant to wait for 12 years and 4 months to move the court. It is pertinent to note that the alleged beneficiaries who have been left out, if at all, have not moved this court in this succession cause. The applicant moved the court under section 74 Law of Succession Act. That Section, in my view, is not appropriate for the application before court. Just looking at that section, it becomes clear how unsuitable it is. It provides as follows:-

“74. Errors in names and descriptions, or in setting out the time and place of the deceased’s death, or the purpose in a limited grant, may be rectified by the court, and the grant of representation, whether before or after confirmation, may be altered and amended accordingly.”

What errors was the applicant seeking to rectify? I would say no.

He further relied on Section 76 of the same Act. That section provides that a grant can be revoked or annulled on very specific grounds. It is also important to reproduce the section for better understanding.

“76. A grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by any interested party or of its own motion-

- (a) that the proceedings to obtain the grant were defective in substance;**
- (b) that the grant was obtained fraudulently by the making of a false statement or by the concealment from the court of something material to the case;**
- (c) that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently;**
- (d) that the person to whom the grant was made has failed, after due notice and without reasonable cause either-**

(i) to apply for confirmation of the grant within one year from the date thereof, or such longer period as the court has ordered or allowed; or

(ii) to proceed diligently with the administration of the estate; or

(iii) to produce to the court, within the time prescribed, any such inventory or account of administration as is required by the provisions of paragraphs (e) and (g) of section 83 or has produced any such inventory or account which is false in any material particular; or

(e) that the grant has become useless and inoperative through subsequent circumstances.

The administrator/applicant does not claim that any of the grounds in that section pertain to this case. The administrator was the one who applied for confirmation of grant in 1995. The question that begs an answer then is how fraud was perpetrated if at all. Reading through some of the affidavits of beneficiaries, it seems to me that what has happened here is that the administrator failed to subdivide the land according to the confirmed grant. He now seems to want to disguise that failure by making the present application. That cannot be the basis for canceling/vary the grant. If at all, those affected need to apply perhaps in other suits for the sub division to be in accordance with the grant. In any case, the Law of Succession does not recognize the variation which is sought by the applicant. It is clear that the beneficiaries have been issued with titles. That being the case and in the absence of allegation of fraud, this court cannot grant orders to cancel their titles. The application dated 4th September 2007 has no merit and is dismissed with costs to the respondent.

Dated and delivered at Meru this 12th day of March 2010.

MARY KASANGO
JUDGE