



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT ELDORET

Succession Cause 228 of 2006

**IN THE MATTER OF THE ESTATE OF WILLIAM KIPKOSGEI BITOK----- -
(DECEASED)**

RULING

The Applicant moves the court under S.76 of the Law of Succession and Rule 44 of the Probate and Administration rules that the Grant of Letters of Administration issued on 22nd May 2007 be revoked and that pending the hearing and determination of the applicant the suit land be preserved. He also prays for costs of the application.

The application is based on the grounds that the Grant was obtained by way of concealment of material facts and that the suit land is the subject of an appeal which is pending in the court of appeal. That the applicant was awarded 10 acres in the suit land and the respondent/Petitioner is in the process of disposing of the suit land. He has sworn an affidavit in support of his application and annexed, inter alia, a decree in HC.CC.No.76/1991 (Eldoret) wherein he was awarded, ex gratia, 10 acres of the suit land. His case is that the Petitioner concealed the Applicant's interest in the suit land while obtaining the Grant of Letters of Administration.

The application is opposed. The administratrix of the estate of the deceased herein has filed a Replying Affidavit in which she denies any wrong doing in obtaining the Grant. She explains all that has happened in court and prays that the application be dismissed as lacking in merit.

At the hearing Mr. Momanyi learned counsel for the Applicant urged that the court do revoke the Grant as the Applicant was a beneficiary of the estate of the deceased and his interests were not catered for as the administratrix was disposing of the suit land yet the applicant had been awarded 10 acres in the suit land. He submitted that there was an appeal to the court of appeal but to wait for the appeal to be determined is to wait for the administratrix to dispose off the suit land as the administratrix has not admitted the existence of a creditor, to wit the applicant to the extent of 10 acres.

Learned counsel for the administrator **Mr. Ngala** submitted that the applicant had no locus to apply to revoke the Grant as he was not a creditor of the estate of the deceased recognized by law. The applicant had lost his case in the High Court and had declined an ex gratia offer of 10 acres and had filed an appeal in the court of Appeal which appeal is still pending. The application for stay of execution pending appeal was declined by the court and so the applicant was evicted from the land. Counsel submitted that there was no judgment for 10 acres and as the applicant had in any case declined that ex gratia offer his present application must fail.

I have given due consideration to the application. For the applicant to succeed he must show, as is required by S.76 of the Law of Succession Act, that:-

- a) **The proceedings to obtain the grant were defective in substance.**
- b) **The grant was obtained fraudulently by the making of a false statement or the concealment from the court of something material to the case.**
- c) **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) **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) **the grant has become useless and in operative through subsequent circumstances.**

It was not demonstrated how the present application comes within the above section of the law. It was not shown in what way the administratrix had done any of the events or failed to do any of the events listed in that Law. I have seen the decree in HC.CC.NO.76 OF 1991. It is imperative that I quote the relevant part thereof.

“The Plaintiff has no alternative but to go by the ex gratia offer of 10 acres given to him by the Defendant and negotiate afresh for the purchase of the balance.”

This is what the Applicant says granted him 10 acres. The administratrix stated that the applicant declined the 10 acres and appealed seeking the entire land. There is no stay of execution granted by court. I do not find that the applicant has satisfied the court that something wrong was done in the process of obtaining the grant and that therefore the Grant must be revoked. This application fails and it is dismissed with costs.

DATED AND DELIVERED AT ELDORET THIS 13th DAY OF MAY, 2009.

P.M.MWILU

JUDGE

IN THE PRESENCE OF:-

Paul Ekitela - Court clerk

N/A - Advocate for the applicant

Mr. Ngala - Advocate for the respondent