



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT ELDORET
PROBATE & ADMINISTRATION 32 OF 2000

IN THE MATTER OF THE ESTATE OF RAEL JEMELI CHEPKWONY (DECEASED)

JAIRO KIRONGO TIROP:.....1ST PETITIONER

JOSEPH KIPROTICH CHUMO:.....2ND PETITIONER

VERSUS

EUNICE KIRONGO CALEB

REBECCA K. BUSIENEI

JOSEPH KIPCHUMBA:.....OBJECTORS

RULING

This is the application of PAUL CHUMO who describes himself as an interested party in the Estate of Rael Jemeli Chepkwony. It is brought under section 76 of the Law of Succession Act Cap.160 and Rule 44 (1) of the Probate and Administration Rules. It prays for stay of execution of the orders of the court granted on the 17th February 2009 and for the Letters of Administration intestate or the judgment of the court distributing the estate of the deceased be annulled, revoked or set aside. It also prays for the costs of the application. It is brought on the grounds that the orders of the 17th February 2009 were issued in the absence of the interested party and that of the objectors and that there is an error apparent on the face of the record. That the Petitioners' land claim over the estate of the deceased was without disclosing full facts material to the case and that the Petitioners are not entitled to the estate of the deceased and allegations on the part of the Petitioners were made in ignorance or inadvertently. The Applicant has sworn an affidavit in support of his application to the effect that the said Joseph Kiprotich Chumo is the Applicant's son who has other land some place else. He adds that he has land which his said son who is the second Petitioner herein can inherit but that he (2nd Petitioner) cannot inherit land from the Applicant's elder sister, the deceased herein. The applicant adds that the 2nd Petitioner his son did not meet treatment expenses for the deceased and that the land in question is 15 acres and not sixteen acres as reflected in the judgment. He concludes that the land was acquired by Rebecca Busienei Caleb and handed over to the deceased and the 3rd objector resides on the land.

The application is opposed and two affidavits are filed in such opposition one sworn by the Advocate

for the 2nd petitioner and the other by the 2nd Petitioner. The one by the Advocate is to the effect that whatever is sworn by the interested party is totally irrelevant to the application and so does the affidavit by the 2nd Petitioner.

I have carefully given this application due consideration. The reasons upon which a Grant of Administration may be revoked or annulled are well set out in section 76 of the Law of Succession Act and they are:-

- 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 ,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***

That the grant has become useless and inoperative through subsequent circumstances.

Section 83 (e) and (g) provide as hereunder:-

[e] within six months from the date of the grant, to produce to the court a full and accurate inventory of the assets and liabilities of the deceased and a full and accurate account of all dealings therewith up to the date of the account;

[f] Within six months from the date of confirmation of the grant, or such longer period as the court may allow, to complete the administration of the estate in respect of all matters other than continuing trusts, and to produce to the court a full and accurate account of the completed administration.

Rule 44 of the Probate and Administration Rules is merely on the procedure and place of bringing an application of this nature.

Neither in the affidavit in support of the application nor in submissions by counsel for the applicant was it shown that the applicant has any interest in the estate of the deceased. It was not shown that he was a dependant of the deceased. The court was not shown the defect in the proceedings leading to the Grant of Letters of Administration. The court finds that the deceased had written a will and which will was not followed due to irregularities leading to its writing. It is the court itself that, following its disregard of the will treated the estate as intestacy and proceeded to distribute the estate upon hearing evidence from all parties herein. The court further finds as a fact that all the matters now raised in this application were also raised in the hearing leading to the court declaring the estate intestacy. Those matters were fully canvassed at that hearing and a determination arrived at as in the judgment. The court finds that those issues were considered before the judgment was written and a finding on the same made in the judgment. No appeal has ever been preferred from the said judgment since it was delivered on 21/02/2003. This court is being asked to set aside the said judgment and/or to review it. No grounds whatsoever have been given to enable the court to either revoke the Grant or to review the judgment.

And this court being of equal jurisdiction cannot be expected to sit on appeal on a sister judge of such equal jurisdiction. This court fails completely to understand on what basis the applicant herein brings this application. He is not personally aggrieved by the decision of the court and he loses nothing by his son inheriting his late sister and does not claim that such grant of a portion of his sister's land to his son is a waste of the estate or is in anyway at all unlawful or against any provisions of the law least of all is it a ground for revocation of grant as envisaged by S.76 of the Law of Succession Act. The upshot is that this application is without merit and the same is for dismissal and it is accordingly so dismissed with costs.

DATED AND DELIVERED AT ELDORET THIS 15th DAY OF JULY 2009.

P.M.MWILU

JUDGE

IN THE PRESENCE OF:-

Paul Ekitela - Court Clerk

Mr. Momanyi - Advocate for the Respondent

No Appearance by Advocate for the Applicant.