



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KAKAMEGA
Succession Cause 408 of 1998

IN THE MATTER OF THE ESTATE OF EZEKIEL LUKALO ALUDA – DECEASED

BEATRICE LUKALO

MARGARET OSOLIKAPETITIONERS

V E R S U S

TOM LUKALOOBJECTOR

R U L I N G

In his application dated 24th October, 2005 the applicant is seeking orders that the grant issued on 29-10-1999 be revoked and/or annulled. The applicant contends that the proceedings leading to the confirmation of the grant were defective as all persons interested were not notified and that the applicant was disinherited.

The application is supported by the applicant's affidavit sworn on 24th October, 2005. The applicant contends that strangers benefited from his late father's estate. The plot given to the applicant and his brother was not in his father's name and that the shares are disproportionate to the detriment of the applicant.

Mr. Anziya, counsel for the applicant submitted that the applicant has been totally disinherited yet the deceased was his father. The plot given to the applicant and his brother, namely plot North Maragoli/471 did not belong to the deceased. The petitioner took the best properties and larger shares than the applicant. Counsel submitted that an application for annulment of the grant was dismissed before the grant was confirmed but this is an application after the grant was confirmed.

Mr. Nyikuli, counsel for the respondent opposed the application. He relied on his application dated 26th May, 2006 seeking orders that the applicant's application for revocation of the grant dated 24th October, 2004 be struck out. The application is supported by the affidavit of the 1st petitioner, Beatrice Lukalo. The main issue raised in that affidavit is that the application to annul the grant is res judicata. Mr. Nyikuli submitted that the law does not differentiate between a grant and a confirmed grant as one grant cannot be divided. The objector sought leave to appeal and that was the proper procedure.

The record shows that the Succession Cause was initially filed at Nairobi as Cause No.1859 of 1996. It was sent to the Kakamega court in August, 1998 and became Kakamega Succession Cause No.408 of 1998. On 28th October, 1999 the petitioners filed an application dated 27th October, 1999 seeking confirmation of the grant of letters of administration made to them on 29th October, 1996.

The record further shows that the application for revocation or annulment of the grant that was initially dismissed was filed on 27th January, 1997. The same reasons as in the application dated 24th October, 2005 were advanced for the revocation of the grant. The earlier application had been responded to by an affidavit of the 2nd petitioner sworn on 16th June, 1997. The said affidavit annexed several documents which relate to the deceased's estate.

For purposes of fairness to the applicant, I will not take it that the issues herein have already been deliberated upon

between the parties. I will evaluate both applications as parties agreed to proceed by way of affidavits. Having made such a consent in form of directions, it will only be fair to consider both applications and the affidavits in support thereto.

The main contention the applicant is raising is that the applicant and other interested parties were disinherited as they were not given any share of their late father's estate. Secondly, that the shares were disproportionate to the detriment of the applicant and thirdly that strangers also benefited.

The application for confirmation of grant dated 27th October, 1999 was granted on 29th October, 1999. The application was supported by the affidavit of the 2nd petitioner, Margaret Osolika. The list of those who survived the deceased is given in paragraph 3 of the said affidavit. That list has 14 people and is quite similar to the list of beneficiaries provided by the applicant/Objector in his affidavit annexed to the application that was dismissed. In the current application the applicant has not indicated the list of the beneficiaries neither has he listed the deceased's estate.

The affidavit in support of the confirmation of grant gives details of how the identification and shares of all persons beneficially entitled to inherit was determined. The objector was allocated plot No. N. MARAGOLI/KSATIRU/471 jointly with DOUGLAS LUKALO. The applicant contends that the plot did not belong to the deceased. I have noted from record that the plot is one of the deceased's properties and unless the alleged owner raises objection, I have no reason to doubt the petitioner's decision to include it as part of the deceased's estate.

The applicant has not indicated which strangers benefited from the estate. Distribution of a deceased's estate should not be taken to be a process whereby each beneficiary should get an equal share. The paramount objective is fairness and where the court is satisfied that distribution is fair, it will not interfere with the proposal presented by the petitioners. None of the other beneficiaries have complained and the applicant's efforts to annul the grant seems not to enjoy the support of the other beneficiaries.

The grant herein was confirmed way-back on 29th October, 1999. This is almost ten (10) years now and it would be unfair to disturb the way the estate was distributed. I believe some of the beneficiaries might have either sold or incurred expenses in improving their respective shares of inheritance. To reverse the process will lead to unnecessary difficulties to the beneficiaries.

In the end, I do find that the objector's application for annulment and/or revocation of the grant lacks merit and the same is dismissed. There shall be no order as to costs.

Delivered, Dated and Signed at Kakamega this 15th day of October, 2009

SAID J. CHITEMBWE

J U D G E