

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT MERU

Misc Succ Cause 180 of 2007

IN THE MATTER OF THE ESTATE OF JASON MBUNGU (DECEASED)

MARGARET CIAKIRIMO JASON PETITIONER/RESPONDENT

VERSUS

DAVID NJUE JASONAPPLICANT

RULING

The chamber summons before me is dated 5th December, 2007 and is expressed to be brought under section 76(1) of the Law of Succession Act and Rule 73 of the Probate and Administration Rules. It seeks an order empowering the Executive Officer of the court to execute all the necessary documents in respect of parcel of land No. L.R. KARINGANI/MUIRU/555 to effect transfer of the same in terms of certificate of confirmation in Chuka PM's Succession Cause No. 49 of 2003. It seeks further that the respondent be directed to produce the original title deed in respect of the suit property and in default the District Land Registrar, Meru South to be directed to dispense with the production of the said title deed during registration.

The application is based on the grounds that the respondent to whom a grant was issued and subsequently confirmed has refused to sign necessary documents to effect distribution of the estate. That due to the conduct of the respondent other beneficiaries are suffering. That unless the orders sought are granted the orders of confirmation of the grant shall be in vain. The respondent has filed a replying affidavit in which she has denied that the grant has been confirmed. She avers that the thumb print in the application for confirmation of the grant purported to be hers is a forgery. She has admitted refusing to sign the transfer documents on that ground and also because the mode of distribution did not reflect the agreement by the dependants.

A similar application was made in Chuka PM Succession Cause No. 49 of 2003 but was dismissed the court holding that it had no jurisdiction to deal with it. The applicant is seeking that a third party, the Executive Officer, be authorized to execute transfer documents in respect of the suit property because the respondent has declined. The application is, however, brought under section 76(1) and Rule 73 aforesaid, which deal with revocation of the grant and the inherent jurisdiction of the court, respectively.

Where an interested party in a succession cause, whether the grant has been confirmed or not, is aggrieved by the failure of the person to whom the grant was made to proceed diligently with the administration of the estate, he may apply to the court to revoke or annul the grant. See section 76(d) (ii) of the Law of Succession Act. The applicant's complaints against the respondent ought to have been brought under the above provision of the Law of Succession Act.

Similarly, the respondent has alleged that the grant issued in her favour was made without her knowledge or consent. That too can only be raised in an application for revocation or annulment of the grant.

This application is incompetent for the reasons stated and is struck out with costs to the respondent.

Dated and delivered at Meru this 17th....day of ...April.... 2008.

W. OUKO

JUDGE