



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (MILIMANI LAW COURTS)
SUCCESSION CAUSE 2797 OF 2003
IN THE MATTER OF THE ESTATE OF NJOKA KIARIE - (DECEASED)

JUDGMENT

I have before me summons for revocation or annulment of grant dated 2nd October, 2003. It seeks revocation of the certificate of confirmation dated 31st January, 1997 confirming a grant made on 17th November, 1995 in Succession Cause No.292 of 1995 before Principal Magistrate's Court Kiambu.

The summons was supported by affidavit sworn by the Objector John Mura Njoka sworn on 2nd October 2003. He explained the consent purportedly made by him and used by the Respondent/Administrator for his benefit stating that he is an illiterate person and signed a letter which according to the Respondent was a letter to a Non-Governmental Organization called Plan International for the issuance of funds to build a water tank in Plot known as Limuru/Rironi/T394.

He also stated that the deceased who was their father had left written will devolving his properties amongst the three houses inter vivos. He annexed the will and its English translations to his affidavit.

All the other beneficiaries including that of the third home supported the contention of the Objector by filing following affidavit.

1. Susan Wairimu Njenga and Geoffrey Kihara Njenga – joint affidavit sworn on 5th October, 2004.
2. Githunguri Njoka sworn on 30th April, 2004
3. Kamau Njoka sworn on 30th April, 2004
4. Kiarie Njoka Kiarie sworn on 30th April, 2004.

Those beneficiaries were present at the time of hearing of the summons for revocation and confirmed to the court that the plot No.Limuru/Rironi/T394 was given to the Objector by their deceased father and father-in-law respectively.

They all including the Objector has no objection to the distribution of the first property namely Land Parcel No.Limuru/Rironi/Ngecha/600.

I also note from the Will that there were other assets of the estate which are not mentioned in the certificate of confirmation and none of the beneficiaries including the Applicant/Objector and the Respondent/Administrator has any issues thereon.

The Respondent/Administrator has filed his replying affidavit sworn on 14th June, 2005 and relies on its contents. He reiterated that before filing summons for confirmation, he consulted and took consent of all the beneficiaries. He however, fell short of either annexing its copy or any other proof of his averments. He also contended that he objects to the validity of the will. He also failed to state anything on other assets mentioned in the said written wish.

Before I consider the evidence and submission before me, I must state that I was informed by the parties that the summons was directed to be heard by oral submissions and they proceeded with hearing thereof accordingly.

I have carefully perused the affidavits from both sides, and I do agree with the Objector that the plot in question was intended by the deceased to be given to him. All beneficiaries agree with him.

The Respondent except for denying the averments has been unable to prove his claim.

I do thus find that the certificate of confirmation was obtained by the Respondent/Administrator without consent and by withholding or concealing the fact of a written wish by the deceased.

I therefore revoke the certificate of confirmation dated 31st January, 1997 made in Succession Cause No.292 of 1995 before Principal Magistrate's Court Kiambu.

To avoid further delay I direct that a fresh certificate of confirmation be granted and the estate be distributed as under:

1. Land Parcel No. **Limuru/Ngecha/600** to be shared by;

(a) **Kiarie Njoka Kiarie – 0.099 Ha.**

(b) **John Mure Njoka – 0.099 Ha.**

(c) **Samuel Njenga Njoka – 0.99 Ha.**

(d) **Githunguri Njoka – 0.182 Ha.**

(e) **Joseph Kariuki Njoka – 0.382 Ha.**

(f) **Kamau Njoka – 0.382 Ha.**

2. **Plot No. Limuru/Rironi/T394** to be registered in the name of **John Mura Njoka.**

Orders accordingly.

Dated and signed at Nairobi this 21st day of February, 2007.

K.H. RAWAL

JUDGE

21.2.07