



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

(MILIMANI LAW COURTS)

Succession Cause 521 OF 2001

IN THE MATTER OF THE ESTATE OF PHILISILAH NJERI GAKURU (DECEASED)

RULING

I have before me an application for revocation of the certificate of confirmation of grant dated 14th April, 2002 and subsequently amended on 8th July, 2003.

The summons for revocation is filed under Section 76 of the Law of Succession Act (Cap 160) and Rules 44(1) and 73 of the Probate and Administration Rules made under the said Act.

The grounds on which the application is supported are that the signatures of some of the beneficiaries have been forged on the consents and concealment of the fact that the deceased left a written will.

The will which is annexed to the summons is dated 3rd June, 1996 and makes reference to only one of the estate properties which is L.R. No. Kiganjo/Nembu/761 and an Assent to L.R. No.Vol.N.28/50/2. It enjoins the executors M/s Macharia and Co. Advocates to distribute the said property in equal shares amongst the seven children.

This is what the certificate of confirmation has not done. It has mentioned other properties including the said property mentioned in the will. The certificate of confirmation mentions that George Ngugi Gakuru to get 50% and others to share equally and I do note that George Ngugi Gakuru is not one of the Administrators.

After I had made directions that the Administrator to file affidavit, the same was filed on 9th June, 2006 sworn on the same day by Paul Muigai Gakuru. No response to the said affidavit is on record.

Mr. Karagu who appeared for the Objector, who had been absent during various appearances, agreed only to file written submissions in which he concentrated only on revocation of the grant and ignoring totally the subsequent directions by the court.

What was agreed was that the estate be distributed equally amongst all the seven beneficiaries. It is also evident that the property was sold in the meantime and the Administrators contended that the proceeds were distributed equally amongst seven beneficiaries. I do not have any proof of such distribution. The sale price of the property as evidenced by Agreement of sale annexed to the summons for revocation is Shs.3,600,000/-. The court has not been shown how the said sum was used and how it was distributed. What I have is the averments that some money was owed by one James Kihara and the same was refunded.

I do agree with the contention of the Objector that the Administrators have failed to show the integrity

while administering the estate.

Coming to the issue of the written will which the Administrators have denied knowledge thereof, I do not think the issue of the will would make much difference. The property shown in the will is included in the certificate of confirmation, only the mode of distribution is not equitable.

With these grounds, I shall revoke the certificate of confirmation as prayed in the summons dated 25th October, 2003.

I shall also direct that the grant of letters of administration issued to Paul Muigai Gakuru, John Wamai and Anastasia Njoki Kihara be revoked and fresh grant be issued to Paul Muigai Gakuru and John Wamai.

Thereafter the summons for confirmation be filed with all the necessary evidence to show the distribution of the proceeds of the sale of Eastleigh property being plot No.264 Eastleigh section II, Nairobi and KShs.75,096.30 at KCB Ltd Ruiru Branch A/c No.1471 20314.

The estate be distributed equally amongst all the seven beneficiaries of the estate.

I do not award any costs.

K.H. RAWAL

JUDGE

21.3.2007