



REPUBLIC OF KENYA

AT THE HIGH COURT IN NYERI

SUCCESSION CAUSE 314 OF 2004

IN THE MATTER OF THE ESTATE OF DUNCAN KARINGITHI..DECEASED

LYDIAH WANGU KARINGITHI.....1ST PETITIONER

JOHN WANJAU KARINGITHI.....2ND PETITIONER

SALOME NJOKI3RD PETITIONER

Versus

BEN NJOGU KARINGITHI.....1ST OBJECTOR/RESPONDENT

WANJAU KARINGITHI2ND OBJECTOR/RESPONDENT

RULING

Summons dated 23rd of July 2007 seeks that the certificate of Confirmation of Grant, which was issued by this court on 26th October, 2006 be cancelled. In support of the application the 1st Petitioner has deponed in her affidavit that her co-administrators filed for confirmation of grant which was confirmed on 26th October, 2006. On being served with that application she filed an affidavit of protest. Her protest was in regard to the distribution in that application for confirmation. When the application for confirmation came up in court on 26th October, 2006 she was in attendance in court. Through an

interpreter she was asked whether she was agreeable to the confirmation. She stated that she was not agreeable. Again through an interpreter she was asked by the court whether she had filed any papers in opposition. She deponed in her affidavit that although her response was that she had filed an affidavit in opposition the court record indicated that she stated she had not filed those papers. The court accordingly proceeded to confirm the grant as prayed. The applicant stated that the confirmation was without benefit of her affidavit in protest.

The application was opposed by the objections. In opposing the objectors stated in their replying affidavit that they were unaware of the affidavit of protest and that they had not been served. They argued that the grant had been confirmed in accordance to the kikuyu customary law. The advocate for the objectors in opposition submitted that the court cannot grant the prayers that are sought by the applicant. He stated that if the applicant was not satisfied with confirmation the applicant should have filed an appeal. The objectors advocate was in agreement with the authority relied on by the applicant mainly the case of In Re Estate of Ngugi (Deceased) (2002) 2 KLR. In that case it was held as follows:

"Where the complaint of the applicant related to the certificate of confirmation only, revocation or annulment of the relevant grant should not be asked for in the application as the certificate of confirmation of a grant could be dealt with without affecting the validity and soundness of the parent grant of letters of administration or the parent grant of probate."

In considering the present application it is important to note that the applicant and the court were not speaking the same language. It is possible there was communication break down in view of the interpretation. Accordingly I do find that the application is merited and the court does hereby grant the following orders:

1. That the certificate of confirmation of grant issued by this court on 26th October 2006 is hereby cancelled.

2. That the original certificate of confirmed grant collected from the court by Catherine who picked it on behalf of the firm of Kinyua Kiama Advocate shall be returned by the said firm to this court within 14 days from this date hereof for cancellation.

3. The costs of the summons dated 23rd July, 2007 shall be in the cause.

MARY KASANGO

JUDGE

Dated and delivered at Nyeri this 15th day of November 2007.

BY. M. S. A MAKHANDIA

JUDGE