



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI (NAIROBI LAW COURTS)

Succession Cause 21 of 1999

IN THE MATTER OF THE ESTATE OF PAUL KAMAU NJUGUNA – DECEASED

AND

SUCCESSION CAUSE NO. 1019 OF 1997

IN THE MATTER OF THE ESTATE OF MIKI NJUGUNA – DECEASED

RULING

I did hear an application for revocation dated 29th March, 2001 filed in Succession Cause No. 21 of 1999. The property in question was Title No. Dagoretti/Mutuini/599. The grant of Letters of Administration was granted to Robert Njuguna Kamau and Moses Mpesha Kaikai the sons of the deceased Paul Kamau Njuguna (referred to as ‘Paul’ hereinafter) in the said cause. The deceased had two widows and several children.

After the said grant was confirmed vide Certificate of Confirmation of a grant on 27th February, 2001, the aforesaid summons was filed by Kirika Kamungu (referred to as ‘Kirika’), a nephew to the older wife of the father of Paul. It was alleged by him that the second wife of Paul’s father had no children and he is a step-brother to Paul in whose name the land in dispute was registered during demarcation to hold in trust for the family. Paul sold portion of his mother (called Miki) and the half portion for his mother should go to Kirika and not the dependants of Paul.

He relied on the award in the Land Dispute between Miki and Paul wherein Paul was asked to transfer half plot of the disputed land in the name of Miki. He also relied on Miki’s Will wherein she has bequeathed her half share of the disputed land to the objector. She also lodged a caveat for the portion of the disputed land.

I could not give my final order on the said summons for revocation in Succession Cause No. 21 of 1999 as I was made aware that a confirmed grant of the Will of Miki mentioned hereinabove was granted to Kirika Kamungu in the estate of Miki on 6th April, 2006 in Succession Cause No. 1019/97. The asset of the said estate was the same as the one in Succession Cause No. 21/99.

That is the reason I withheld my final order until the issue of confirmed grant of probate, which involves the same disputed land, is resolved.

Thereupon, the Administrator Robert Njuguna Kamau and Moses Mpesha Kaikai filed summons for revocation dated 6th July, 2006 of the grant of probate issued in Succession Cause No.1019/97.

I heard the application, the earlier one having already argued before me.

It is true that Kirika has not divulged the existence of the aforesaid grant made in his favour while he filed the objection.

The objectors have filed an affidavit sworn by Robert Njuguna Kamau on 6th July, 2006. Karika has not filed any response to the said affidavit and his counsel relied on the records of both the cases.

It is averred and not denied that Miki did not have any child and Kirika is son of Kamungu Kirika who was a brother of the grandfather of the objectors and thus they have a superior right over Miki's property, if at all she had any.

As regards the right of Miki over the portion of disputed land is concerned, it is averred that the decision of panel of elders was given on 17th June, 1982 after the dispute was referred to them by the High Court on 25th November 1981 in H.C.C.S. No. 142 of 1977 between Miki (as the plaintiff) and Paul (as the defendant)

On 29th May, 1984 the said award was read and any party not satisfied with the award was given leave to apply. The order of the court was to be notified by the Registrar to Miki or her counsel.

The certified proceedings before the elders and the Court were annexed to the affidavit of Robert Njuguna. The award read and I quote

“The panel of elders recommended that Miki Njuguna be given 0.5 acres to be staying there and farming there until her death.”

This was made the order of the Court as observed hereinbefore.

In short, she was given life interest over 0.5 acres of the disputed land which right expired on her death. She has not obtained any proprietary right over the disputed land which she in turn can bequeath on someone else after her death. The veracity of elders' decision and the order of the High Court adopting the same as its own order has not been challenged.

In the premises, I have to accept the legal position and thus dismiss the summons for revocation dated 29th March, 2001 filed in Succession Cause No. 21 of 1999 and allow the summons for revocation dated 6th July, 2006 filed in Succession Cause No. 1019/97.

As a result thereof, I revoke the confirmed grant of probate issued on 6th April, 2005 in Succession Cause No. 1019/1997 and confirm the certificate of confirmation of grant dated 27th February, 2001 in Succession Cause No. 21/99.

Due to the circumstances of these cases, I shall not make any order on costs.

Dated and signed at Nairobi this 17th day of November, 2006.

K. H. RAWAL

JUDGE

17.11.06