

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

Civil Appeal 53 of 2002

NJERU NGUNJURANO APPELLANT

VERSUS

NJUE NGUNJURANO RESPONDENT

J U D G M E N T

This appeal arises out of a Succession Cause No. 40 of 2000 relating to the estate of Ngunjurano Kamwende deceased. Letters of Administration were issued to Njue Ngunjurano (hereinafter referred to as the Respondent) on 17th day of April 2001.

Subsequently on the 8th October 2001, Njeru Ngunjurano (hereinafter referred to as the Appellant) filed an objection which on the face of it indicated it was an objection to the making of a grant of representation to the estate of the deceased. Obviously the grant had already been issued and at best he ought to have either objected to the confirmation of the grant or applied for revocation of the same.

On 4th January 2002 the matter came up before the Resident magistrate who noted that the objection filed on 8th October 2001 by the Appellant had not been heard or determined. The appellant was served and both parties appeared before the trial magistrate on 24th January 2002 when they were given time to discuss the issue of subdivision (presumably distribution).

The matter was mentioned several times thereafter and on 4th March 2002 the court ordered the hearing to proceed. After partly taking the evidence of the Appellant the court ordered that he be given a copy of the proposed subdivision (distribution?) and again adjourned the matter and gave parties a chance to settle.

On the 15th March 2002 the Respondent filed a summons for confirmation of the grant issued to him. He also filed an affidavit in support of the application identifying the shares of the heirs. The matter next came before the magistrate on 21st March 2002 when parties again indicated that they had failed to reach an agreement whereupon the court ordered the case to proceed. In his evidence before the trial magistrate the Objector noted that his concern had been taken care of in the proposed sub-division and therefore he had no objection to the grant being confirmed as presented.

Consequently the trial magistrate confirmed the grant with the proposed distribution or subdivision as he called it.

From the above it is evident that there was no proper objection before the trial magistrate as the grant had already been issued and the Appellant could only protest to its confirmation which the appellant did not do.

Secondly it is evident that the appellant after going through the proposed distribution, indicated to the trial magistrate that he had no objection to the confirmation of the grant as the proposed distribution had taken care of his concerns and the distribution was done equally. Although there was no consent entered before the magistrate, there was a clear indication that there was no objection to the confirmation of the grant and the trial magistrate was at liberty to confirm the same.

There were other Beneficiaries to this estate whose presence was not noted at the time of confirmation of the grant. None of these persons have however raised any objection to the confirmation of the grant. The appellant cannot therefore be heard to complain for them.

For the above reasons I find that there is no substance in this appeal and do therefore dismiss it in its entirety.

Dated signed and delivered this 20th day of July 2005.

H. M. OKWENGU

JUDGE