



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT NYERI

Succession Cause 32 of 1984

IN THE MATTER OF THE ESTATE OF MURAYA NJUI
..... DCD

AND

MUTHONI MURAYA
PETITIONER/RESPONDENT

AND

1. BONIFACE GICHINGIRI MURAYA)
2. JAMES MURIUKI MURAYA)
RESPONDENTS

VERSUS

1. PETER MATHAYO MURAYA)
2. HELINA WANJIKU MURAYA)
3. ELIZABETH WANGUI MURAYA)
4. PETERSON KIRONGO MURAYA)
5. HUDSON MUNYIRI MURAYA)
OBJECTORS/APPLICANTS

RULING

This is a dispute concerning the estate of Muraya Njui (deceased) who died at PCEA Tumutumu Hospital on 1st March 1983. The succession cause was initiated by his wife Rahab Muthoni Muraya (hereinafter referred to as the Petitioner) who petitioned for letters of administration on the 18th October 1984.

A grant issued to the Petitioner and confirmed on the 19th July 1993 was revoked by Ang'awa J. on 30th November 1993 after some of the deceased's children namely Peter Mathayo Muraya, Helina Wanjiru Muraya, Peterson Karongo Muraya and Hudson Munyiri Muraya (hereinafter referred to as the Applicants) successfully applied for revocation of the grant on the ground that it was obtained

fraudulently by making of a false statement. The Summons for revocation named the Petitioner and her two sons Boniface Gachingiri Muraya and James Muriuki Muraya as the Respondents. The two sons were the persons to whom the deceased's property namely Magutu/Gaikuyu/171 was vested by the revoked grant.

On 30th September 1997, the applicants brought an application under section 143 of the Registered Land Act & Rules 49, 59 & 73 of the Probate & Administration Rules for rectification of the land register for parcel number Magutu/Gaikuyu/171 to revert back to the name of the deceased pending the hearing and determination of the succession cause. This application was granted by consent of the parties on the 10th November 1999. The matter was then fixed for hearing on 20th November 2001 when Hon. Juma J proceeded to hear the evidence.

It is noteworthy that according to a certificate of Death No. 329, 389 annexed to an affidavit sworn by the 2nd Respondent on 7th July 1995, the Petitioner died on 7th April 1995. No order for substitution has been made to date.

Hon. Juma J left before the hearing of the case was finalized. This court thereafter took over the case and proceeded with the hearing under Order XVII rule 10(2) of the Civil Procedure Rules and reserved the same for judgment.

Having perused the file I have found that the 'matter' irregularly proceeded to hearing. It is evident that the summons for revocation was heard and determined and the grant issued to the Petitioner revoked. This meant that the succession cause reverted back to the position as it was before the issuance of the grant. The 'matter' pending before the court was therefore the determination of the petition.

It should be noted that the applicants did not file any cross petition. The petitioner being deceased and no substitution having been made, the succession cause could not proceed to hearing. Moreover there were no directions given by the court after the revocation of the grant as to how the "matter" was to proceed. I find that the proceedings before me were materially defective and I cannot therefore proceed with the issue of determination of the heirs or distribution of the deceased's estate based on the defective proceedings. For the ends of justice to be met, the court moves suo motto under Order 44 rule 1 of the Civil Procedure Rules and rule 73 of the Probate & Administration Rules and sets aside the proceedings from 20th November 2001 to 8th July 2005 and order that the parties do take appropriate action to regularize the position.

I make no orders as to costs.

Those shall be the orders of this court.

Dated this 6th day of October 2005.

H. M. OKWENGU

JUDGE