



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)

Succession Cause 220 of 2000

IN THE ESTATE OF SAMUEL KABUI MUKORA (DECEASED)

RULING

This court was called upon to determine the summons for revocation and or annulment of the grant, which was confirmed on 20th March 2002. The application is dated 4th June 2003 and it is brought by Lucas Mungai Kabui, Paul Njoroge Kabui and Edward Ndungu Kabui. The application is premised on the grounds that the grant that was issued to Edward Mukora Kabui on 18th July 2000 and subsequently confirmed on 20th March 2002 was obtained fraudulently by making of false statements, concealment from the court of material facts and by way of untrue allegations of facts essential in point of law to justify the grant. According to the supporting affidavits, the deceased, the late Kabui Mukora died intestate on the 15th April 1981 and was survived by the first wife the late Felicitas Wambui Kabui who later passed away and the following children.

Edward Mukora Kabui son of the 2nd wife

Henry Kimamo Kabui - first wife

Joe Mbugua Kabui - first wife

Lucas Mungai Kabui - first wife

Teresia Murugi Muraya - first wife

John Kamachia Kabui - first wife

Paul Njoroge Kabui - first wife

Edward Ndungu Kabui – first wife

Except for Edward Mukora kabui whose mother Gladys Wanjiru predeceased the late Kabui Mukora all the other children are by his first wife Felicitas Wambui Kabui. The petitioner did not inform the Applicants when he obtained the letters of administration. The petitioner falsely and fraudulently stated that he had sought the consent or renunciation of rights of all the children of the deceased, and while indeed no such consent was given to the petitioners.

The consent that was purportedly signed by six (6) children was not signed by them and is a forgery.

Further the petitioner indicated in an affidavit sworn on 14th May 2001 that the deceased was not survived by any widow or children except himself which is a misrepresentation. It is on the basis of these misrepresentation and forged documents that the letters of administration were made to the petitioner on 18th July 2000 and subsequently confirmed on 20th March 2002. The deceased parcels of land being

Chania/Kanyoni/912

Chania Kanyoni/908 and

Muguga/Gitaru/333

were all vested upon Edward Mukora Kabui.

The respondent/petitioner did not attend court during the hearing despite the fact that the date for hearing was fixed by M/S Ndungu Githuku counsel for the respondent. I have considered the replying affidavits by the respondent that was sworn on 18th July 2003. He has admitted that the deceased was survived by a widow and children. The gist of the matter deposed to in the said affidavit can be summarized as follows:

1. That the deceased distributed his land during his lifetime but retained the titles in respect of the properties contained in the petition in his name but in Trust of the respondent.
2. That the applicants were fully aware of the respondent's petition but they did not want to be involved since they had no interest in the particular parcels of land.

I am of the firm view that, all this information should have been disclosed by the application in the petition. The law is clear in that before letters of administration are granted all persons entitled in the some degree or in priority with the applicant should be notified. I am satisfied that the respondent misled the court in his application when he stated that the deceased was not survived by any other child or widow.

Accordingly there is sufficient justification for this court to revoke the grant that was issued on 18th July 2000 to Edward Mukora Kabui and confirmed on 20th March 2002, and all the consequential transactions pursuant to the said grant are consequently revoked.

Considering that the deceased died in 1981 and this petition was filed in 2000, I am inclined to exercise the inherent jurisdiction rested in this court by virtue of Section 47 of the Law of Succession Act and rules 73 of the P & A rules and appoint administrators who should bring in an application for confirmation within a period of six(6) months. I would have been reluctant to appoint the petitioner, but going through the affidavit, it would appear that the deceased did not allocate to him any land in his lifetime as he did to the other beneficiaries.

It is mete and just that he should be appointed as an administrator together with one of applicant's Paul Njoroge Kabui in order to include the interests of both houses.

Accordingly let a new grant be made to Edward Mukora Kabui and Paul Njoroge Kabui who should either jointly or singularly file the summons for confirmation within six months. The costs of this application should be born by the respondent.

It is so ordered.

Ruling read and signed on 4th February, 2004.

MARTHA KOOME

JUDGE