



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT ELDORET

SUCC CAUSE 22 OF 02

IN THE MATTER OF THE ESTATE OF NJOROGE WAWERU

AND

IN THE MATTER OF APPLICATION BY MIGWI NJOROGE

AND

IN THE MATTER OF THE AN OBJECTION BY SOLOMON CHEGE

RULING

On 21st January, 2003, Migwi Kiama Njoroge, who is the applicant herein, was granted Letters of Administration intestate, to the Estate of Njoroge Waweru. On 5.3.2003, Solomon Njoroge Chege who claims to have been a friend of the deceased filed this application, seeks orders to have the Grant revoked on the basis of the grounds that the same was obtained fraudulently, by concealment of material facts and that the said Migwi Kiama Njoroge was not a relative of the deceased. The Estate comprises of a farm at Mafuta known as UASIN GISHU/MAFUTA/117(herein after called the subject parcel) The applicant has now moved this court under sections 45, 47 and 73 of the Succession Act Cap 160 and all enabling provisions of the law and seeks an order that the objector his servants and/or agents be restrained from planting any crops or in any other way dealing with the subject parcel pending the hearing of the main succession cause.

Briefly, the facts that have led to the application are that on 21.1.2004, the applicant attempted to plough the subject parcel but he was beaten, allegedly by the objector and his sons, and he was thus unable to carry out his intentions. The respondent denies this fact and alleges that it was the applicant who actually beat up his son who was then grazing on the said parcel.

The issue that arises is, who between this applicant and the respondent is entitled to plough the subject parcel and for that reason, to manage the Estate. Secondly, can the said authorized person undertake such activities to the exclusion of all others? I am of the opinion that the answer to the question lies in section 45 of the Law of Succession Act Cap 160 which stipulates that;

“(1) Except so far as expressly authorized by this Act, or by any other written law, or by a grant of representation under this Act, no person shall, for any purpose, take possession of dispose of, or otherwise intermeddle with, any free property of a deceased person.

(2) Any person who contravenes the provisions of this section shall -

(a) be guilty of an offence liable to a fine not exceeding ten thousand shilling or to a term of imprisonment not exceeding one year or to both such fine and imprisonment; and

(b) be answerable to the rightful executor or administrator to the extent of the assets with which he has intermeddled after deducting any payments made in the due course of administration.” The above section says it all. The applicant has a Grant of Letters of Administration over the said Estate. That Grant remains valid until otherwise revoked or annulled by this court, and until then he remains the person who is authorized to deal with the Estate, to the exclusion of all others, including objectors who have to wait for the determination of their applications.

In any event, the above finding is confirmed by the fact that having been so mandated with the responsibility to manage the Estate, he is under an obligation to “faithfully administer the estate according to law and to render a first account thereof whenever required by law to do so.”

I do not believe that he can fulfill such an undertaking if, he has no sole and exclusive rights of management of the Estate. It is for the above reasons that I find that this application is meritorious and I do grant orders in terms of prayers (ii) . The applicant shall have the costs of the application.

JEANNE GACHECHE

JUDGE

Dated and delivered at Eldoret this 3rd day of March,2004.

GEORGE DULU

JUDGE

Delivered in the presence of;