



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KISII

crim app 262 of 03[1]

SILAS OUMA ONYANGO ODILA APPELLANTS

VERSUS

REPUBLIC..... RESPONDENT

JUDGMENT.

IN THE MATTER OF THE ESTATE OF KIARIE NJUGUNA

RULING

This application was filed by Daniel Kiarie on 10th November 2003 brought under Rule 73 of the P & A Rules and Section 3A and 7 of the Civil Procedure Rules.

The applicant seeks for orders that the summons for revocation or annulment of grant dated 8th August 2001 by the objector be struck out. The application is supported by the affidavit of the applicant sworn on 10th November 2003. The gist of the matter deponed to in the said affidavit and the grounds upon which the application is premised and raises the following:

- 1) That the issues raised in the application by way of summons for revocation dated 8th August 2001 are the same as the issues that were raised in R.M.S.C. No. 42/ 90 at Gatundu 2) The Letters of Administration was issued on 6th October 1998 and confirmed on 18th June 1995 and the subject land Ndarungu/Karatu/834 was subdivided and title deed was issued.
- 3) Thirdly when this application came up for hearing on 19th January 2004, the objector was given 30 days within which to prosecute the application and they have failed to do so. The application was opposed by the counsel for the objector. He relied on an affidavit of the objector sworn on 9th March 2004. According to the objector there are serious issues raised in the application for revocation.

- The objector was not a party and was not aware of the Succession Cause at Gatundu - The grant herein would appear to be defective as it was confirmed before it was issued.

- Thirdly and more importantly the objector's advocates have been trying to fix a hearing date pursuant to the order of 19th January 2004. They invited the applicant's advocates on 20th January 2004 to attend the

Registry with a view to fixing a date, but they could not trace the physical address of the petitioner's advocates. The Registry therefore could not give ex parte dates.

I have given due consideration to the application dated 7th November 2003, the replying affidavit and submissions by both counsel. There are issues raised that cannot be wished away by merely dismissing the application to revoke the grant. The issue of whether there was a valid grant that was capable to transfer the property. The issue of whether the matter is res judicata and others disturbed me. Accordingly in the interest of justice and to ensure that there is no abuse of the court process, I disallow the application dated 7th November 2003.

There will be no order as to costs. I direct the Registry to give a priority date for the hearing of the application dated 8th August 2001.

Ruling read and signed this 31st day of March 2004.

MARTHA KOOME

JUDGE