



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

FAMILY DIVISION

SUCCESSION CAUSE NO. 751 OF 2013

IN THE MATTER OF THE ESTATE OF JOSEPH KAIME KAMU (DECEASED)

JECINTA WANJIRU MWANGI.....1ST PETITIONER

PATRICK KAMAU KAIME.....2ND PETITIONER

VERSUS

MARGARET KARUNGARI KAIME.....1ST OBJECTOR

ANTHONY NGANGA KAMAU.....2ND OBJECTOR

JOHN MUCHINA KAMAU.....3RD OBJECTOR

RULING

1. On the basis that the deceased Joseph Kaime Kamau had died intestate on 6th October 2012, on 10th April 2013 his widow Jecinta Wanjiru Mwangi (1st petitioner) and son Patrick Kamau Kaime (2nd petitioner) petitioned this court for the grant of letters of administration intestate. The grant was issued on 19th July 2013. On 19th October 2013 the deceased's other widow Margaret Karungari Kaime (1st objector) and her two children, Anthony Nganga Kamau (2nd objector) and John Muchina Kamau (3rd objector) filed an application seeking the revocation of the grant on the basis that the deceased had died leaving a written Will whose executors were the 1st petitioner and the 1st objector; that the two had been granted probate in the High Court at Nakuru in **P & A No. 9 of 1969**; and that this information had not been brought to the attention of the Court when issuing an intestate grant to the petitioner.

2. On 29th January 2014 the petitioners appointed Olaly Cheche & Co. Advocates to act for them. On the same day, the firm and M/s Githui & Co. Advocates for the applicants filed a consent seeking the transfer of the cause to the High Court at Nakuru to be consolidated with **HCCC No. 359 of 2010 (O.S.)** for hearing and disposal.

3. **HCCC No. 359 of 2010 (OS)** was filed by the 2nd and 3rd objectors against Joseph Kaime Kamau and Bernard Ndungu Kamau over the deceased's Will. Some of the prayers were:-

“1. THAT this court declares that the Will of the late Kamau Kaime which was granted probate by the High Court sitting in Nakuru in Succession Cause No. 9 of 1969 created a constructive, express or a resulting trust over the following properties by the deceased:-

(a) IR No. 530/84 at Elburgon;

(b) Plot No. 15 at Njoro;

(c) LR No. 451/675 at Nakuru;

(d) LR No. 451/676 at Nakuru;

(e) Plot No. 4 at Nakuru – Freehold;”

2.THAT the trust so created required the defendants to manage the property on behalf of the benefit of the plaintiffs and any profit receiving from the management of the properties and the administration of the trust property be invested and applied for the benefit of the *cestui que trust* including the plaintiffs.”

4. The High Court at Nakuru found that the petitioner and the 1st objector (being widows of the deceased) had participated in **HC Succession Cause No. 9 of 1969** at Nakuru in which they had, by consent, distributed the estate of the deceased in a confirmed grant. Their six sons had benefitted from the estate. It was therefore found that the originating summons was *res judicata* and an abuse of the process of the court for seeking to relitigate matters relating to the estate of the deceased.

5. The 1st objector sued the 1st petitioner and others in **ELC Civil Case No. 35 of 2014** at Nakuru seeking the cancellation of the title to Nakuru Municipality Block 10/17 in the name of Joseph Kamau Kaime so that it could be returned into the name of the deceased. This was one of the properties of the deceased that was subject of the distribution to the beneficiaries. In a ruling delivered on 20th June 2018, the court found, once again, that the claim relating to the distribution of the estate of the deceased was *res judicata*.

6. There is no dispute that when the instant petition was filed and grant obtained, the same estate had been the subject of the **Succession Cause No. 9 of 1969** at Nakuru in which the properties had been distributed to beneficiaries, including the petitioners. This was the complaint contained in the objectors’ application filed on 29th October 2013 for the revocation of the grant. On 29th January 2014 the parties’ counsel sought that this cause be consolidated with **HCCC No. 359 of 2010 (OS)** at Nakuru. Unfortunately, this cause file was not physically transferred to Nakuru as it was intended. **HCCC No. 359 of 2010 (OS)** was eventually heard and determined that the estate of the deceased had long been determined in **HC Succession Cause No. 9 of 1969** in Nakuru. I find that the decision ideally concluded the instant cause. The decision compromised the application for revocation filed on 29th October 2013. It was no longer necessary for the grant issued to the petitioners to be confirmed. Infact, the decision, in effect, found that, the present cause was *res judicata*.

7. When the court issued notice on 29th October 2018 to the petitioners to show cause why the cause should not be closed, and went on to close the cause on 4th December 2019, all that was in error as no cause existed at the time. The dispute had been determined in Nakuru. It is for this reason that I decline to grant prayer 1 of the summons dated 14th June 2019 by the petitioners. I cannot reinstate a cause that had already been determined.

8. Secondly, and regarding prayer 2 of the summons, the application for revocation was compromised when this cause was consolidated in **HCCC No. 359 of 2010 (OS)** at Nakuru which determined that the cause was *res-judicata*.

9. In conclusion, I dismiss the application dated 14th June 2019 with costs. It was wholly unnecessary.

10. I am grateful to Kanyi Ngure & Co. Advocates for the petitioners and Githui & Co. Advocates for the objectors for their submissions.

DATED and DELIVERED NAIROBI this 10TH day of MARCH 2021.

A.O. MUCHELULE

JUDGE