

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KAKAMEGA

SUCCESSION CAUSE NO. 519 OF 1998

IN THE MATTER OF THE ESTATE OF ISMEAL BARASA OCHANJI (DECEASED)

RULING

1. The application, dated 24th June 2020, seeks revocation of a certificate of confirmation of grant, on grounds that Wilson Sifuna Barasa was a son of the deceased but not a liability or creditor, as claimed in the Chief's letter dated 4th November 1998, and that he had a portion on Plot No. 7 Malaha.
2. There is a reply to the application, vide an affidavit sworn by John Barasa Ismail, on 6th July 2020. He is the administrator of the estate. He avers that the grant was confirmed in 2015, after a full trial, where oral evidence was presented and recorded. He states that no appeal was preferred against the decision on the confirmation of the grant, and a determination of the instant application on merits would amount to this court sitting on appeal on the judgment of 10th July 2015. He avers that there is no basis for review of the said order, for there is no error apparent on the face of the record.
3. The application was canvassed by way of written submissions, which I have read through, and noted the arguments made therein.
4. In the first place, the Law of Succession Act, Cap 160, Laws of Kenya, does not provide for revocation of certificates of confirmation of grant, but of the grants of representation themselves. A certificate of confirmation of grant is not a grant, but a document which certifies that the grant has been confirmed. It is not among the documents that are envisaged in section 76 of the Law of Succession Act for revocation.
5. Secondly, the letter from the Chief is not part of the pleadings. It is not even a legal requirement under the Law of Succession Act and the Probate and Administration Rules. It is filed merely to assist the court ascertain the survivors of the deceased and the persons beneficially entitled to a share in his estate.
6. Thirdly, Wilson Sifuna Barasa was listed in the petition and the application for confirmation of grant as a liability or creditor of the estate, as he had allegedly redeemed the property in question from the auctioneer's hammer, and, as such, he was claiming entitlement to reimbursement from the estate for the monies he spent in that effort to secure estate property, something which is quite proper in the circumstances.
7. Wilson Sifuna Barasa was properly listed in the confirmation application as a son of the deceased, and the issue of his having salvaged Plot No. 7 Malaha from auctioneers was canvassed at the oral hearing of the confirmation application. Jackson Aineah Egessa Barasa testified on the issue, and so did John Barasa Ismail and Wilson Sifuna Barasa himself. The court, in the judgment delivered on 17th September 2017, made a specific finding that Wilson Sifuna Barasa had salvaged that property, and proceeded to allocate the whole of it to him.
8. As stated above, a certificate of confirmation of grant is not available for revocation under section 76 of the Law of Succession Act. A party aggrieved by the manner a court has handled confirmation, files an appeal against the confirmation orders, rather than filing for revocation of the grant or of the certificate of confirmation of the grant. That was the option available to the applicant, which he did not take advantage of.
9. There is no merit in the application dated 24th June 2020, and I hereby dismiss it, with costs.

DELIVERED, DATED AND SIGNED IN OPEN COURT AT KAKAMEGA THIS 12TH DAY OF NOVEMBER 2021

W MUSYOKA

JUDGE