



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT CHUKA

MISC. SUCCESSION CAUSE NO. 44 OF 2018

IN THE MATTER OF THE ESTATE OF THE LATE RR (DECEASED)

EKK.....1ST PROTESTOR/APPLICANT

CKM.....2ND PROTESTOR/APPLICANT

R U L I N G

1. Before this court is Summons for Revocation of Grant dated 5th November 2018 taken out by **EKK** and **CKM** the Applicants herein who have moved this court pursuant to **Section 76 of Law of Succession Act** for revocation of grant in respect to the estate of the late RN who died intestate on 25th January 1984 resident at Gautini Mugumango. The grant was issued vide **Chuka Principal Magistrate's Court Succession Cause No. 111 of 2009** on 24th August 2009.

2. The Applicants claim that the grant was obtained fraudulently and through making false statements by the Petitioner/Respondent. They have further accused the Respondent for concealment and their major complaint is that they are daughters to the deceased but were left in the administration of his estate.

3. EKK, the 1st Applicant herein, has through a Supporting Affidavit sworn on 5th November 2018 deposed that the deceased herein was married to two wives namely;-

(i) CR.

(ii) CR.

She further claims that the 1st wife had two children inclusive of the Petitioner/Respondent while the Applicants are from the 2nd house.

4. The 1st Applicant further claims that both households were brought up in the estate (South/Mugumango/217). She has faulted the Petitioner for disinheriting them and trying to evict them from the estate.

5. She further claims that on 18th September 2018, the Respondent's husband and one EN attacked her and destroyed her house and other properties forcing her to flee for dear life. She avers that she reported the crime at Ntumu Police Station and that the same was booked under OB No. 16/18/9/2018.

6. She has further accused the Respondent for moving with haste to dispose of the estate with a view to disinheriting them.

7. Gakurie M'Rimi the Petitioner/Respondent has through a Replying Affidavit sworn on 19th December 2018 opposed this application. She has denied all the allegations made by the Applicant and insisted that the deceased who was her father had only one wife CR (deceased)

8. The Respondent further claims that the late CR was not a wife but a concubine to the deceased with whom they got only one child EMR. She claims that EMR survived the deceased but later died living only one child ENR whom she has given 6 acres from the estate.

9. The Respondent further claims that Applicants are total strangers who never lived in R's house.

10. The Respondent claims that the applicant returned recently to stake claim over the portion given to one JKR who was a son to the deceased and who is now deceased. The Respondent contends that the Applicants can take out letters of administration on the estate of the said JK if they are true heirs to his estate.

11. The Respondent further avers that she is the only surviving child to the deceased and that the deceased had prior to his demise had given

her half the estate but died before effecting transfer.

12. This court upon inviting both parties for directions on how this contested matter would be canvassed, gave directions on 13th December 2018 that the matter would be canvassed through oral evidence to give either side a chance to test the veracity of the claims and counter claims made by the opposing sides. The matter was also given priority due to its age.

13. When the matter came up for hearing on 9th March 2020, the Respondent's counsel initially complained of late service and requested for adjournment. The Applicants' counsel on her part stated that she was ready to proceed and because the matter had been given priority a request for adjournment by the Respondent was declined and this court slated the matter for hearing at 10.30 am same day. Later at 10.30 am, the Applicants counsel turned up and in the presence of Respondent's counsel stated that the applicants had inexplicably disappeared and was not able to proceed. Her effort to secure an adjournment was equally declined by this court for the same reasons. The Applicants' counsel faced with a dilemma closed her case with no evidence to offer.

14. This court has considered the affidavits filed by the applicants and though I find the allegations serious, I find that the Respondent has equally filed response to each and every allegation leveled against her. It is trite law that whoever alleges has the burden of prove. The Applicants have alleged that they are daughters of the deceased herein and that the Respondent has locked them out from the estate which claims have been denied by the Respondent. The Applicant had the burden to prove their allegations to the required standard in law which is on a balance of probabilities. They have, as I have observed above filed affidavits in support of their claims but in the absence of establishing the veracity of their claims through hearing and the attendant cross-examination, this court finds that the veracity of their claims, serious as they are, has not been established and proved to persuade this court to grant them the prayers sought. There are no reasons advanced to explain why they shied off at the eleventh hour.

15. In the end this court finds no merit in the application dated 5th November 2018 the same is disallowed but I shall make no order as to costs.

Dated, signed and delivered at Chuka this 12th day of May 2020.

R. K. LIMO

JUDGE

12/5/2020

Ruling signed, dated and delivered in the open court in presence of Kaaria for Applicant and Mutani for Respondent.

R.K. LIMO

JUDGE

12/5/2020