



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

SUCCESSION CAUSE NO.595 OF 2015

THE MATTER OF THE ESTATE OF ITUMO MBUTA (DECEASED)

LABAN NDUVA MASAI.....PETITIONER

-VERSUS-

JOSEPH MAKUSA MUTHOKA.....OBJECTOR

RULING

1. The objector **Joseph Makusa Muthoka** claims that the land **Machakos/Ulu/28** ought to be divided into three equal parts pursuant to a succession cause 1 of 1980 where court ordered the same, and in failing to disclose the same to court, the petitioner concealed material facts hence the grant of letters of administration issued on 13th July, 2017 and the certificate of confirmation on 24th May, 2018 be revoked.

2. The specific facts as contained in the affidavit in support of an application for revocation of grant dated **17th August, 2018** are that the objector is a grandson of the deceased and his wife and vide **Succession Cause 1 of 1980**, the Kilungu District Magistrate Court had ordered that **Machakos/Ulu/28** be divided in three equal parts and each house of the deceased's to get 5.166 hectares out of 15.5 hectares of this land. Further that the deceased's grandsons were not consulted when filing the instant succession cause and thus the court do issue the following orders;

a. An order stopping the petitioner from dealing with land parcel Machakos/Ulu/28;

b. The grant issued on 13th July, 2017 and the Certificate of Confirmation issued on 24th May, 2018 be revoked and the title deed entered in the proprietorship section on 12.6.18 and issued on 19.6.2018 and transactions affected using the grant be cancelled;

c. That land parcel Machakos/Ulu/28 be divided into 3 equal parts as per the court order of 30.4.1980 because the deceased had three wives.

3. There are undated affidavits filed on 23rd October, 2018 by Jackson Musyoka Ndeti, Ndisya Itumo and Austin Wambua Muthoka that aver that the Applicant has no interest in Parcel No. Machakos/Ulu/28 and therefore the same ought not to be subdivided.

4. Vide undated affidavit filed on 23rd October, 2018 the petitioner denied concealing anything from the family whilst making the application for letters of administration and that he has already executed the grant and the land is being subdivided to all it's rightful beneficiaries.

5. Learned counsel for the petitioner vide written submissions filed on 6.2.2019 submitted that the protestor has not demonstrated the circumstances provided for under Section 76 of the Law of Succession Act to warrant the revocation of grant.

6. The Objector's submissions reiterated what is contained in his affidavit in support of the application that **L.R.No. Machakos/Ulu/28** ought to have been divided into three (3) equal parts as per the decision of Kilungu court.

7. The issues I have to determine are; whether the applicant has raised sufficient grounds for revocation of grant; whether this court can grant the orders sought by the applicant.

8. The circumstances in which a grant may be revoked or annulled are set out in section 76 of the Law of Succession Act as follows:

Revocation or annulment of grant a grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by any interested party or of its own motion—

a. that the proceedings to obtain the grant were defective in substance;

b. that the grant was obtained fraudulently by the making of a false statement or by the concealment from the court of something material to the case;

c. that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently;

d. that the person to whom the grant was made has failed, after due notice and without reasonable cause either—

i. to apply for confirmation of the grant within one year from the date thereof, or such longer period as the court order or allow; or

ii. to proceed diligently with the administration of the estate; or

iii. to produce to the court, within the time prescribed, any such inventory or account of administration as is required by the provisions of paragraphs (e) and (g) of section 83 or has produced any such inventory or account which is false in any material particular; or

e. that the grant has become useless and inoperative through subsequent circumstances.

9. The applicant's application imputes semblance of the following grounds:-

(a) The grant was obtained fraudulently by the making of a false statement or by the concealment from the court of something material to the case; or

(c) The grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently.

10. Applying the test of law in section 76 of the Law of Succession Act, the applicant alleges that he has an interest in the land parcel 28. The nature and particularities of his interest are not clear in the application. I am aware that this court does not have jurisdiction to determine disputed interests over land as the Environment and Land Court does and therefore the applicant ought to approach that court for redress if need be.

11. Non-disclosure of material facts to the succession court is another ground that the applicant imputes

upon the petitioner. The substance of those material facts have not been satisfactorily demonstrated to this honourable court. I have noted that the applicant is not a direct beneficiary of the estate of the deceased, and in light of my reasoning above with regard to the powers of the court, his prayers for subdivision of land into three equal parts and an order restraining the petitioner from dealing in the **Parcel Number Machakos/Ulu/28** cannot be litigated in this Succession Cause. In any event the replying affidavit by the Petitioner and another relative have comprehensively explained that the Protester has no interest in the suit land. Hence the application is an abuse of the court process.

12. Applying the above legal test to the application before me, I find the same fails and is dismissed. Each party to meet their own costs.

It is so ordered.

Dated, signed and delivered at Machakos this **4th** day of **April**, 2019.

D.K. KEMEI

JUDGE