



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KAKAMEGA

SUCCESSION CAUSE NO. 74 OF 2005

IN THE MATTER OF THE ESTATE OF ANG'ANA ANGULU (DECEASED)

FRANCIS ANG'ANA ANGULU.....1ST OBEJCTOR/APPLICANT

JOHN MUKUNA ANGULU.....2ND OBEJCTOR/APPLICANT

VERSUS

FRONICA OMENDA AKENGO.....PETITIONER/1ST RESPONDENT

P.A.G. IMBITSA CHURCH.....2ND RESPONDENT

RULING

1. This succession cause relates to the estate of the late Ang'ana Angulu who was a grandfather to the applicants. The father to the applicants (now deceased) was a son to the said Ang'ana Angulu who was also the father to the 1st Respondent herein.

2. The objectors/applicants have filed an amended notice of motion dated 5th April, 2017 seeking for orders that:-

1. That the honourable court be pleased to order that the grant of representation issued to the petitioner/respondent vide Kakamega H.C. Succession cause no. 74 of 2005 on 16th November, 2007 and the Certificate of Confirmation dated the 3rd day of March, 2009 be revoked.

2. That the subsequent titles 2916: approximate area 2.23 Ha and 2917: approximate area 0.17 Ha issued in respect of land parcel No. W/Bunyore/Embali/30: approximate 2.6 Ha issued pursuant to the issuance of the said grant and certificate of confirmation be revoked.

3. That the applicants be allowed to file a fresh petition for grant of letters of administration to the estate of the deceased instead of the respondents.

4. That the honourable court be pleased to issue an interim injunction against the petitioner/respondents, their agents and or assigns from using, subdividing, selling or leasing the said parcels of land W/Bunyore/Embali/2916: approximate area 2.23 Ha and 2917: approximate area 0.17 Ha until this application is heard and determined.

5. That costs of this application be provided for.

3. The application is premised on the grounds on the face of the application and supported by a joint affidavit of the applicants. The respondents were served with the notice of motion but did not file a response. They were also served with a hearing notice to the notice of motion and failed to turn up for the hearing. The matter proceeded ex parte. The applicants gave evidence on oath and called two witnesses.

4. The evidence for the applicants was that their late grandfather (the deceased herein) left behind land parcel West/Bunyore/Embali/30. That their late father and consequently themselves were beneficiaries to the estate of the deceased.

5. That later on they learnt that the 1st respondent had filed this succession cause without involving them. They learnt that a grant of letters of administration had been confirmed in the name of the 1st respondent on the 29th January, 2009 wherein the said property had transmitted to the 1st respondent and the 2nd respondent. The 1st respondent had then sub-divided the said land parcel into W/Bunyore/Embali/2916 and

2917. She transferred the latter parcel of land to the 2nd respondent. The respondent thereafter subdivided land parcel No. 2916 into land parcels No. West Bunyore/Embali/3233, 3234, 3235 and 3236.

6. After the applicants learned of the matter they filed the instant application. They contend that the grant was issued to the 1st respondent fraudulently by failing to disclose to the court that the applicants were entitled to inherit land parcel West Bunyore/Embali/30.

7. The applicants in their application attached copies of the following documents – copies of the grant and confirmed grant issued to the 1st respondent, a search certificate for land parcel West Bunyore/Embali/30 and search certificates for land parcels Nos. W/Bunyore/Embali/3233-3236.

8. I have considered the application. The respondents were served with the application and did not file a response. The documents filed by the applicants in support of the application are self-explanatory. A perusal of the court file indicates that the letter of the Assistant Chief that was filed with the petition did not mention that the applicants were beneficiaries to the estate of the deceased herein. The affidavit sworn by the 1st respondent in support of the petition, P&A. 5, indicated the 1st respondent as the only beneficiary to the estate of the deceased. The affidavit of the 1st respondent in support of summons for confirmation of grant, P&A. 9 indicated the 1st respondent and P.A.G. Imbitsa Church as the only beneficiaries to the estate of the deceased.

9. The application for revocation of grant is made under Section 76 of the Probate and Administration Rules. The section provides as follows:-

“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;

10. The applicants have adduced uncontroverted evidence that the deceased in this succession cause was survived by the 1st respondent as daughter and the children of the 1st respondent's deceased brother, Christopher Angulu Angana. The said children are the applicants and the children of their deceased brother, Samson Angulu. It is then apparent that the 1st respondent obtained the grant fraudulently by making of a false statement that she was the only beneficiary to the estate of the deceased and concealment from the court that the applicants were also heirs to the estate of the deceased. The grant therefore ought to be revoked for that reason.

11. The 1st respondent has sub-divided the deceased's estate after fraudulent procurement of a grant. The 2nd respondent, P.A.G. Imbitsa Church, was not mentioned in the affidavit in support of the petition, form P&A 5, as a creditor to the estate of the deceased. The transfer of part of the estate to the 2nd respondent was thereby fraudulent. The titles issued to both respondents should therefore be cancelled to enable fresh distribution of the estate to the rightful heirs.

12. In the foregoing the court makes the following orders:-

(1) The grant of letters of administration issued to the 1st respondent on the 16th November, 2007 and the certificate of confirmation of grant dated 3rd March, 2009 are hereby revoked and annulled.

(2) Title Nos. West Bunyore/Embali/2916 and West Bunyore/Embali/2917 issued pursuant to the annulled grant are hereby cancelled and annulled.

(3) Title Nos. West Bunyore/Embali/3233, 3234, 3235, 3236 and any other title issued pursuant to sub-division of West Bunyore/2916 and 2917 are hereby cancelled and annulled.

(4) The title to the whole of the suit land is to revert to the name of the deceased herein, Ang'ana Angulu.

(5) A fresh grant of letters of administration is to issue in the names of Francis Ang'ana Angulu, John Mukuna Angulu and Fronica Omenda Akengo.

(6) The new holders of the fresh grant are to file a fresh summons for confirmation of grant within 30 days of the issuance of this order and if any of the parties does not consent to the proposed mode of distribution to file a protest within 15 days of service of the proposed mode of distribution.

Orders accordingly. The applicants to bear their own costs to the application.

Delivered, dated and signed in open court at Kakamega this 9th day of May, 2019.

J. NJAGI

JUDGE

In the presence of:

Mr. Ondieki holding brief for Njogu for the Objectors/Applicants

Objectors/Applicants - absent

Petitioners/Respondents - absent

Court Assistant - George