



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT ELDORET**

**PROBATE & ADMINISTRATION CAUSE NO. 21 OF 1987**

**IN THE MATTER OF THE ESTATE OF SAUL MAGWINGWI SONGWA (DECEASED)**

**AND**

**IN THE MATTER OF AN APPLICATION FOR REVOCATION AND/OR ANNULMENT OF GRANT**

**BETWEEN**

**PATRICK BARASA MAKWINGWI.....1<sup>ST</sup> APPLICANT**

**ARMSTRONG S. SONGWA.....2<sup>ND</sup> APPLICANT**

**AND**

**GEORGE WAKHUNGU SONGWA.....RESPONDENT**

**RULING**

**[1]** This ruling is in respect of the Summons for Revocation of Grant dated **12 November 2018**. It was filed herein on **26 November 2018** by the two Applicants, **Partick Barasa Makwingwi** and **Armstrong S. Songwa** pursuant to **Sections 26 and 29** of the **Law of Succession Act, Chapter 160** of the **Laws of Kenya** and **Rules 45 and 49** of the **Probate and Administration Rules** for orders that:

**[a]** Spent;

**[b]** Spent;

**[c]** That the Court be pleased to make a provision in favour of the Applicants with regard to the occupation and use of land parcel **No. Kimilili/Kamukuywa/875**;

**[d]** That in the alternative to [c] above, orders be issued as follows:

**[i]** That the Certificate of Confirmation of Grant made to **George Wakhungu Songa** on **11 January 2017** and as may have subsequently been issued, be revoked and annulled for providing for intermeddlers of the estate of the late **Saul Magwingwi Songa**;

**[ii]** That following [i] above, the Court be pleased to order the Respondent herein to file and/or furnish to the Court an accurate, true and up to date account/inventory of all the Assets and Liabilities and a full an accurate account of all dealings therewith up to the date of the account;

**[e]** That the Costs of the application be provided for.

**[2]** The application was predicated on the ground that the Respondent, who is the Administrator of the estate of the Deceased, **Saul Magwingwi Songa**, as well as the other sons of the Deceased, sold the Suit Property to various people before confirmation of Grant; and that only some of such purchasers were provided for in the Certificate of Confirmation. It was thus the contention of the Applicants that it is

unfair for the court to recognize only some purchasers to the detriment of some of the beneficiaries who now have to use their own respective portions to meet the expectations of their purchasers.

[3] It was further the contention of the Applicants that they were not given a hearing before the Certificate of Confirmation was issued; and therefore that, had their case been heard, the Court would have arrived at a different conclusion. It was on that basis that they urged the Court to find that the proceedings leading to the confirmation and issuance of the Certificate of Confirmation of Grant on **11 January 2017** were marred by a lot of anomalies, irregularities, deliberate and willful exclusion of the Applicants; and that the Court was thereby deliberately misled by the Respondent to their (Applicants') detriment. It was further the contention of the Applicants that, since the Respondent misled the Court into making provisions for intermeddlers, he ought to be found guilty of an offence for purposes of **Section 95** of the **Law of Succession Act, Chapter 160** of the **Laws of Kenya**.

[4] The aforementioned grounds were amplified in the annexed Supporting Affidavit, sworn by the 1<sup>st</sup> Applicant, **Patrick Barasa Makwingwi**, to which he annexed copies of the various sale agreements entered into by the beneficiaries of the estate of the Deceased. At paragraph 18 of the Supporting Affidavit, the 1<sup>st</sup> Applicant averred that he has lived on the Suit Property all his life and has no other piece of land to give the purchasers who were not provided for. He added that it is discriminatory for the Respondent to make provisions from the estate for only some of the purchasers to whom he sold land and not all; hence their application for account and redistribution.

[5] The Respondent opposed the application vide his Replying Affidavit filed herein on **15 January 2019**. He averred that part of the Suit Property was compulsorily acquired by the Government of Kenya long before the demise of the Deceased; and that all he did was to make provision in that regard as he did for the other four purchasers to whom part of the Suit Property was sold at the instance of the entire family and the proceeds utilized to settle the entire family's financial needs. He added that the Applicants were party to those agreements and duly signed the same. Hence, the Respondent denied that he personally sold the Suit Property for his own personal gain. He added that the process of subdivision is ongoing in accordance with the Certificate of Confirmation and that it would be in the best interest of all the beneficiaries for this Succession Cause, which has been pending for the last 32 years, to be brought to a close.

[6] Having carefully considered the application, the affidavits in respect thereof and the submissions filed herein, it is manifest to me that the application is misconceived. Misconceived because **Section 76** of the **Law of Succession Act**, provides that:

**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 assist 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.**

[7] What ought to have been the target of revocation and/or annulment is, not the Certificate of Confirmation of Grant, but the Grant itself. Moreover, it has not been alleged that the Grant was obtained in any of the circumstances set out in **Section 76** aforementioned. In the premises, and without further ado, I would strike out the application dated **12 November 2018**, which I hereby do with no order as to costs.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT ELDORET THIS 7<sup>TH</sup> DAY OF JUNE 2019**

**OLGA SEWE**

**JUDGE**