



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KERICHO

SUCCESSION CAUSE NO.59 OF 2014

IN THE MATTER OF THE ESTATE OF THE LATE MUSA KIPKEMOI CHONGOTI (DECEASED)

AND

STEPHEN KIPKETER CHONGOTI)

EMILY CHEPKURUI CHONGOTI),.....ADMINISTRATORS/RESPONDENTS

VERSUS

JOSEPH KENDUIWO CHONGOTI.....1ST PROTESTOR

JAMES KIPROP CHONGOTI.....2ND PROTESTOR

STANLEY CHONGOTI.....3RD PROTESTOR

RULING

1. Before me is an application brought by way of Summons dated 15th May 2018 for revocation or annulment of grant filed by Joseph Kenduiwo Chongoti, with 3 prayers. Two prayers have been spent as follows:

1. (Spent)

2. (Spent)

3. That the Grant of Probate to Stephen Kipketer Chongoti and Emily Chepkirui Chongoti as the administrators be revoked or annulled.

2. The application does not indicate the provisions of the law under which it was brought. It has grounds on the face of the Summons which are that the proceedings to obtain the certificate of confirmation were defective in substance, and marred by concealment of information that some property would be put in trust to the disadvantage of some beneficiaries; the certificate of confirmation was obtained without the constructive consent by all parties on mode of distribution of properties such as the heads of cattle numbering over 80 and non-disclosure of bank account, and over 20,000 trees valued at kshs.10,000,000/- and that a beneficiary James Chongoti, a son of the deceased was left out.

3. The application was filed with a supporting affidavit sworn by the objector/applicant Joseph Kenduiwa Chongoti on 15th May 2018, which repeats and amplifies the grounds of the application.

4. The application was opposed through a replying affidavit sworn on 18th January 2019 by Stephen Kipketer Chongoti one of the administrators. It was deponed therein that the letters of administration, confirmation of grant of Letters of Administration and distribution of assets were all done with the consent of all beneficiaries, including the objector. It was also deponed that the rectification of Grant was done merely to correct errors, and did not interfere with the mode of distribution as alleged by the objector, and that James Chongoti did not get any share in the distribution of the estate because the deceased had already given him a share while he was still alive, and that the said James Chongoti consented to the mode of distribution herein.

5. The application proceeded by filing written submissions, with the objector filing written submissions through counsel M/s Ngeno & Co. Advocates on 19th February 2019; and the respondent's submissions filed through counsel M/s Muchoki Kangata Njenga & Co. Advocates

on 12th March 2019.

6. Mr. Mwangi for the applicant and Mr. Ngeno for the respondent who appeared in court relied on written submissions filed.

7. This is an application for revocation or annulment of grant of Letters of Administration which have been confirmed. Before this application was heard, interim preservatory orders were granted by this court on the whole estate.

8. This court has jurisdiction under section 76 of the Law of Succession Act (Cap.160) Laws of Kenya to revoke or annul a Grant of Letters of Administration, whether confirmed or not. The section provides as follows:

“76. 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.

The provisions of the above section are amply captured in the two cases of the Estate of **Peter Mwangi Njoroge [2015] eKLR** and the case of the Estate of **Kiptonui Chemurbii – Kericho Succession Cause No.12 of 2011**, cited by the objector’s counsel herein.

9. I have considered the application, documents filed, and the submissions filed. I will start with technical points.

10. Though the protestor/applicant’s claim is that he brought the application for revocation of grant on behalf of other beneficiaries of the estate, the contents of the application is clearly shown that the application was brought by only one person Joseph Kenduiwo Chongoti. His claim in the affidavit that he was authorized by his brothers James Kiprop Chongoti and Stanley Chongoti on their behalf has no basis, as they did not sign the summons which was signed by the applicant alone and all other documents were signed by him. He cannot thus claim to be acting on behalf of those two brothers.

11. Secondly, though the applicant claims in the application that he is pursuing the interests of James Chongoti, this person also did not sign any document in the application, and therefore the applicant has no basis to act for him. The said James Chongoti has his own independent right to come to this court, if he has issues to pursue. I thus hold that the objector/applicant is the only person who has brought to court his own complaint, and that is the interest that he can claim or pursue.

12. I now come to the merits of the application. The burden was on the applicant/protestor to demonstrate on the balance of probabilities that he has a justifiable complaint for the relief that he seeks from this court in the form of revocation of annulment of grant of Letters of Administration. This is the statutory requirement under section 107 and 109 of the Evidence Act (Cap.80) which states as follows:

“107. 1) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist

2) When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.

109. The burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.”

13. Having considered all the facts and evidence placed before me, I find that the objector/applicant has not met the threshold for grant of the orders sought. Though he stated that he was not involved or did not consent to the mode of distribution of the estate, the consent for confirmation and mode of distribution (of assets) dated 28th November 2018 clearly has his name and signature as No.3 (designated c). It cannot thus be said that he did not consent to the confirmation of Grant and mode of distribution of assets herein.

14. The subsequent rectification of grant also did not affect the distribution of the assets to his detriment. With regard to the cows and trees on the land mentioned by the objector herein, the court does not deal with assets that are not disclosed to it by the parties. The said cows and trees were not an issue at confirmation of grant stage and could not thus be dealt with by the court. I have to state that though the objector thinks that assets should be valued before distribution, the law has no such requirement. The fact therefore that the assets in an estate of a deceased person have not been valued before distribution, *per se* is not a ground for revocation of grant. If he wanted the assets or any asset to be valued before distribution, he should have raised that issue before confirmation of grant and distribution of assets, which he did not do. It is too late in the day for him to come back to this court on that account.

15. In conclusion, I find no merits in the application and dismiss the same with costs to the administrators/respondents. Any interim orders granted by this court in respect of this application are hereby vacated.

Dated and delivered at Kericho this 9th day of October 2019.

GEORGE DULU

JUDGE