



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT BOMET**

**SUCCESSION CAUSE NO.21 OF 2016**

**IN THE MATTER OF KIPSOI ARAP NGASURA.....DECEASED**

**AND**

**RICHARD KIMUTAI MARITIM.....PETITIONER/APPLICANT**

**VERSUS**

**SAMWEL KIPRONO MARITIM.....FORMER PETITIONER/RESPONDENT**

**RULING**

1. Before me is an application by way of Notice of Motion dated 19<sup>th</sup> October 2017 brought by Richard Kimutai Maritim. Two of the prayers in the application have been spent as follows:

a) .....(spent)

b) .....(spent)

**c) This Honourable Court be pleased to review its orders made on 10<sup>th</sup> July 2017 confirming the grant issued to the respondent whereas he is not the petitioner.**

**d) The costs be provided for.**

2. The grounds of the application are that on 9<sup>th</sup> May 2017, the court nullified the grant of letters of administration issued to the respondent and issued letters of administration to the applicant, but despite that the respondent in the absence of the applicant obtained confirmation of Grant of Letters of Administration and was in the process of effecting the same in order to obtain title deeds.

3. The application was filed with a supporting affidavit sworn by the applicant Richard Kimutai Maritim on 19<sup>th</sup> October 2017.

4. The application was opposed through a replying affidavit sworn by the respondent (former petitioner) Samwel Kiprono Maritim on 27<sup>th</sup> March 2019- in which it was deponed that both parties were present in court when orders were issued that each side file their proposed mode of distribution but the applicant did not do so, and thus the court proceeded on the basis of the proposed mode of distribution filed, and beneficiaries had already processed their various titles as per the mode of distribution approved by the court.

5. The applicant through counsel Chemutai Carolyne filed written submissions on 24<sup>th</sup> May 2019 arguing that after the grant of letters of administration to the respondent was nullified, there could be no confirmation of grant in the name of the same respondent; and that the grant should thus have been confirmed in the name of the applicant Richard Kimutai Maritim. Counsel relied on the powers of this court under section 76 of the Law of Succession Act (cap.160).

6. Counsel for the respondent Mr. Mugumya in written submissions filed on 03/10/2019 contended that since on the day of confirmation of grant in court, all beneficiaries including the applicant were present and agreed to the proposed mode of distribution, the applicant could not now say that there was concealment of material facts and relied on the Case of **Jesse Karanja Gatutimu vs Mary Wanjiku Githinji [2014] eKLR**.

7. With regard to whether a review to the orders of this court should be granted, as requested, counsel submitted that there was no basis for review as the applicant was just seeking to protect the interests of purchasers. According to counsel, any dispute by parties regarding any purchase to land should go to the Environment and Land Court for adjudication and relied on the Case of **Getruda Atsiemo Ouma vs Peter Joseph Osogo & 3 Others [2016] eKLR**. Counsel also submitted that there was no discovery of new and material information or facts that

could justify the review order sought.

8. I have considered the application and documents filed, as well as the submissions on both sides. The application was brought through a Notice of Motion, which is an unusual procedure in succession matters, as the applications under the Law of Succession Act (cap.160) are usually brought by way of Petitions or Summons. That however, is a technicality of procedure as the application was brought under Rule 73 of the Probate and Administration rules, and in my view is curable under the provisions of Article 159 of the Constitution.

9. Though counsel for both sides have argued at length, the main prayer herein relates to the respondent Samwel Kiprono Maritim appearing in the confirmed grant as the administrator, while he was not appointed an administrator. That according to the applicant is the reason for seeking review orders.

10. I have seen and perused the ruling of the court dated 9<sup>th</sup> March 2017 revoking the grant issued to the former petitioner Samwel Kiprono Maritim who was found by the court to be guilty of *mala fides*, that is bad faith. He was ordered to pay costs of the application dated 7<sup>th</sup> December 2016, which was subject of that ruling. The court also observed in the ruling that the grant had already been revoked, but did not say when and how. However, it is clear that no new administrator was appointed by the court in that ruling.

11. On 10<sup>th</sup> May 2017, however, the court signed a certificate of Grant of Letters of Administration issued to Richard Kimutai Maritim, the applicant herein, and from the record, the same has not been revoked or challenged. Though, on 3<sup>rd</sup> July 2017 Samwel Kiprono Maritim, the respondent filed a summons for confirmation of Grant of Letters of Administration, claiming to be one of the administrators which he was not, and used an earlier Grant of Letters of Administration issued to him on 30<sup>th</sup> June 2016, the confirmed grant issued on 10<sup>th</sup> July 2017 was done in the name of Richard Kimutai Maritim who has made the present application.

12. The asset in the estate was only one that is land Kericho/Ndarawetta/598 which was distributed to the beneficiaries - Geoffrey Kiprono Maritim 0.38 Ha; Geoffrey Kiprono Maritim and Evaline Chelagat Chesimet 1.52 Ha; Richard Kimutai Maritim 1.3 Ha; Samwel Kiprono Maritim 1.3 Ha; Grace Chelangat Maritim 1.3 Ha; and Joyce Chepkorir Maritim 1.38 Ha. All beneficiaries were to take care of their liabilities, and it is clear that the applicant got his share of 1.3 Ha among the other beneficiaries.

13. It follows that it is not true that the respondent Samwel Kiprono Maritim is the administrator in the confirmed grant as alleged by the applicant.

14. In my view, therefore, the applicant has not demonstrated any reason for review of the Confirmed Grant of Letters of Administration which was issued in his own name. He is misleading this court that letters of administration were confirmed in the name of a wrong person which is not true. There is thus no error on the face of the record which would cause this court to rectify or replace the name of the administrator. Instead, the applicant should know that as the confirmed administrator, it is his function and legal duty to administer and wind up the estate with the mode of distribution ordered by the court.

16. I dismiss the application for review dated 19<sup>th</sup> October 2017, with costs to be paid by the applicant Richard Kimutai Maritim to the respondent Samwel Kiprono Maritim.

**Dated and delivered at Bomet this 6<sup>th</sup> day of November 2019.**

**GEORGE DULU**

**JUDGE**