



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

SUCCESSION CAUSE NO. 278 OF 2000

IN THE MATTER OF THE ESTATE OF M'IBUATHU M'ILULA (DECEASED)

JOEL MITHIKA M'IBUATHUPETITIONER

MARGARET CIOMAU 1ST OBJECTOR

PAULINA KAKA M'IBUBATHUAPPLICANT

RULING

[1] Before me is a Summons for revocation of grant dated 8/3/2019 which is expressed to be brought pursuant to **Section 76 of the Law of Succession Act and Rule 44 of the Probate and Administration Rules**. The applicant/2nd Objector seeks amongst other orders; annulment and or revocation of the certificate of confirmation of grant issued on 19th February 2019.

[2] The grounds upon which the application is premised are stated in the application and supporting affidavit of Paulina Kaka M'Ibubathu sworn on 8/3/2019. It is contended that the grant was obtained through misrepresentation and concealment of material facts for some of the beneficiaries were left out. It was further averred that the applicant's uncle who is bent at grabbing the estate brought in the 1st objector and her children to claim that they are wife and children of the deceased. But these are just but strangers.

[3] The application was opposed through the replying affidavit of Margaret Ciomau sworn on 25/4/2019. She deposed that she was married to the deceased who built her a house next to the 2nd objector's mother's house. She stated further that the assertions made by the 2nd objector are false and misguided and is another attempt by the petitioner to prevent distribution of the estate.

ANALYSIS AND DETERMINATION

[4] Are there grounds **to annul and or revoke the grant?**

[5] The applicant must establish one or more of the grounds set out in **Section 76 of the Law of Succession Act**. According to the applicant, the 1st objector and her children are strangers to the estate. It is also claimed that some beneficiaries were left out.

[6] The history of this file tells its own story. At the inception, the petitioner stated that he is the only beneficiary of the estate of the deceased. An objection was raised by the 1st objector who pointed out that the deceased was survived by:

1ST HOUSE

- a) Rael Kooru - Widow
- b) Joel Mithika - Son
- c) Joyce Muthenya - Daughter Married
- d) Paulina Kaka - Daughter Married
- e) Mary Kangai - Daughter Married

2ND HOUSE

- a) Margaret Ciomaua - Widow
- b) Regina Karambu - Daughter Married
- c) Martha Kathure - Daughter Married

[7] The petitioner who is the brother of the applicant did not object to this but affirmed the declaration made by the 1st objector. This can be traced from the petitioner's affidavit on distribution sworn on 30/7/2007. If indeed the 1st objector and her children are not beneficiaries of the deceased but strangers as alleged, I find it curious that the petitioner has acknowledged them considering that they would get a share of the estate. What's more is that the applicant in her supporting affidavit stated and I quote:

“THAT we had been in use and active occupation on my father's land where the 1st objector herein had built her house before my father's death and even four years after my father's death when my uncle brought her to the property without any explanation as to where she lived before and how our father had married her.”

[8] These assertions portray a person who is not clear on the question before the court. The opening sentence acknowledges that the 1st objector had her house built before the deceased's death. The second part states that her uncle brought the 1st objector to the property after the death of the deceased. She is trying to link quite incongruous positions which is a sign of dishonesty on the part of the 2nd objector. The argument was a distortion of the true position of things- something that left a vivid impression or picture in the mind of the court on the real purport of the argument; an attempt to mislead the court- utter abuse of court process. Ultimately, she only succeeded in creating a feeling of gauntness and dreariness in the court.

Beneficiaries

[9] Were some beneficiaries left out? This issue was dealt by Lenaola J (as he then was) in his ruling dated 31/10/2007 where he noted that married daughters of the deceased had expressed no wish to have any share in the estate. The 2nd objector was among the said married who renounced their right. None appealed the said decision. This application is therefore, an invitation for the court to sit on appeal over its decision. Besides, the 2nd objector has provided no prove that the court was misinformed in arriving at the said conclusion.

[10] Accordingly, I do not find anything solid on which the grant herein should be revoked. As a result, I dismiss the application with costs to the 1st objector.

Dated, signed and delivered in open court at Meru this 10th day of December 2019

F. GIKONYO

JUDGE

In presence of

M/s Nelima for Mburugu for 2nd administrator

Muriera for M/s Soy for 1st administrator

M/s Aketch for Objector – absent

F. GIKONYO

JUDGE