



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

SUCCESSION CAUSE NO. 310 OF 2015

IN THE MATTER OF THE ESTATE OF M'ANYORO M'ITUMA (DECEASED)

MARIA KATIRIA M'KWARIA.....PETITIONER

RULING

[1] This decision relates to two applications dated 22nd June 2017 and 27th November 2017. It was agreed that both applications be canvassed by way of written submissions. I will deal with each application as follows.

Application for revocation

[2] The application dated 22nd June 2017 is a summons for the revocation or annulment of a grant and is expressed to be brought pursuant to Section 76 of the Law of Succession Act CAP 160 and rule 44 of the Probate and Administration Rules. The grounds upon which the summons is grounded are set out in the body of the summons and the affidavit sworn by Charles Mutua M'anyoro (**hereinafter the objector**) on 14th December 2017. The Objector claims that he was never involved in the succession cause despite being a son of the deceased. And that a grant had already been issued in Succession Cause 125 of 1999. He denied that he wants to interfere with the estate of the deceased estates as in the latter succession cause there is neither an appeal nor revocation of grant issued thereto.

[3] The objector in his submissions dated 31st January 2018 reiterated what he had stated in his application and affidavit. However, he further submitted that the application for revocation was not opposed for the petitioner ought to have filed their objection in the Meru Succession Cause No. 125 of 1999 instead of starting an entirely different and parallel process.

Petitioner: Earlier cause closed

[4] The application was opposed by the Petitioner through her replying affidavit. She deposed that the applicant is out to frustrate the other beneficiaries so that he can get a bigger share in the estate. What's more; he failed to disclose to the court that the Succession Cause No. 125 of 1999 was closed by the court and allowed them to file a fresh cause.

[5] The Petitioner in her submissions dated 6th February 2018 submitted that the application for revocation of grant dated 22nd June 2017 has no merits and amounts to abuse of the court process. The issues raised by the objector do not warrant the revocation of the grant. Application be dismissed and the distribution of the estate to be finalized as prayed for by the petitioner in her application dated 27th November 2017.

Removal of inhibition

[6] The application dated 27th November 2017 was by way of summons under Sections 68 and 78 of the Land Registration Act No. 3 of 2012, Rules 49 and 73 of the Probate and Administration Rules and all other enabling provisions of the law seek for the following orders:

1. **THAT** on the first instance this Honourable Court be pleased to certify this application urgent and the same be heard exparte
2. **THAT** this Honourable Court be pleased to issue orders for the removal and lifting of Orders of inhibition and restrictions which are registered against parcel L.R.NO.NKUENE/NKUMARI/33 to facilitate the distribution of the estate of the deceased herein as ordered by the Court.
3. **THAT** the costs be provided for.

[7] The grounds upon which the summons is grounded are set out in the body of the summons and the affidavit sworn by Maria Katiria M'Kwaria on 27th November 2017. She stated that since the said land was inhibited by the court pending the hearing and

determination of Meru High Court Succession Cause No. 125 of 1999 which was later closed the inhibition orders be removed to facilitate the distribution of the estate.

[8] This application was opposed vide a replying affidavit sworn by Charles MutuaM'anyoro who reiterated what he had deposed in his application dated 22nd June 2017. He further stated that the application be disallowed.

DETERMINATION

[9] On the revocation application dated 22nd June 2017; does it satisfy Section 76 of the Law of Succession Act CAP 160? The section provides;

“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.”

[10] The major ground for seeking revocation is that grant had already been issued under Succession Cause 125 of 1999. The petitioner, however, stated that the said grant was revoked and was allowed by the court to file a fresh cause. I have perused **Meru Succession Cause 125 of 1999** and the record show that grant issued in the said cause was revoked on 11th June 2009 for it was made by the Deputy Registrar without jurisdiction. The ruling by Kasango J reads in part:-

“In the result, the grant issued by the Deputy Registrar without jurisdiction on 15th March 2000 and confirmed by the High Court on 4th December, 2000 is revoked”.

[11] From the same record, the court on 24th February 2015 J. A. Makau J allowed prayer 1 of the summons dated 18th August 2014 to the effect:

“1. THAT the applicant/ objector be and is hereby granted leave to petition this Honourable Court for Letters of Administration to enable her administer the estate of the deceased.

And also ordered:

2. Meanwhile, this file is hereby ordered to be closed”

[12] A notice to show cause why **MeruSuccession Cause 125 of 1999** should not be dismissed was issued pursuant to orders by Mabeya J. The notice was scheduled to be heard on 29th June 2017. On 19th July 2017, Mr.Kiogoraappeared before Mrima J and he informed the court that the grant in that cause was revoked and the file closed by court. He also informed the court that pursuant to the leave of court, they had filed Meru Succession Cause No 310 of 2015 in which the grant had been confirmed already. He supplied the court with certificate of confirmation of grant. Again, the court marked file number**MeruSuccession Cause 125 of 1999** ‘FILE CLOSED’.

Unscrupulous act

[13] It is therefore false and misleading for the Objector to state that the grant in **MeruSuccession Cause 125 of 1999** was not revoked or that the current proceedings are parallel to cause No 125 of 1999. This is quite malevolent of and stealth manoeuvres by the objector in order to cause confusion and perhaps steal a match from the other beneficiaries. The Objector misled this court for his own benefit. He has not come before this court with clean hands but with ulterior intent; perhaps to disinherit the other beneficiaries of the estate or frustrate administration of justice in this case. I am the wiser; to prevent this from happening again I direct that the two files be and are herebyconsolidated. On the

basis of the foregoing, the application for revocation dated 22nd July 2017 has no foot on which to stand; it is hollow and tainted with falsehoods. It does not meet the threshold provided in section 76 of the Law of Succession Act and is hereby dismissed with costs to the petitioner.

[14] With regard to the application dated 27th November 2017, the inhibition and restrictions which are registered against parcel L.R.NO.NKUENE/NKUMARI/33 were to preserve the estate of the deceased. Now that the grant herein has been confirmed, the inhibition serves no useful purposes; it is now an impediment to administration and distribution of this estate. The grant herein must be implemented by the administrator without delay. I am aware the law also requires expeditious administration of estate of the deceased with a requirement for accounting back within six months. Time has passed by due to the application by the objector and also these inhibitions. Therefore, in the absence of any lawful justification to sustain the inhibitions, I direct that all inhibitions or restrictions or caveats placed on L.R.NO.NKUENE/NKUMARI/33 shall be removed forthwith in order to facilitate the distribution of the estate I also direct that the Registrar of land shall dispense with production of title documents herein and shall register the grant and its intents immediately. In the result, the application dated 27th November 2017 be and is hereby allowed with costs in the cause. It is so ordered.

Dated, signed and delivered in open court at Meru this 10th day of May 2018

F. GIKONYO

JUDGE

In the presence of:

Mr. Kiogra advocate for Petitioner

Mr. Mutuma advocate for Kimani for objector

Petitioner – present

Objector - Present

F. GIKONYO

JUDGE