



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KIAMBU
SUCCESSION CASE NO. 15 OF 2016
IN THE MATTER OF THE ESTATE OF MUNYIHA MARAGARA (DECEASED)

KAMAU MARAGARA.....APPLICANT

VERSUS

FRANCIS KAMWANA MARAGARA

GABRIEL GITAU MARAGARA.....RESPONDENTS

RULING

1. The proceedings herein relate to the estate of the Late Munyiha Maragara (Deceased). The Deceased died intestate in 2000. He left three beneficiaries – the Applicant and the two Respondents. The estate had only one asset: the land parcel known as Loci/Thuita/188.
2. After the Deceased died, the Applicant filed for Letters of Administration in ***Thika Succession Cause No. 235A of 2004***. They were granted on 27/10/2004. At the confirmation stage, the Respondents contested the mode of distribution suggested by the Applicant whereby he was to get a bigger portion of the land. A fully-fledged hearing ensued and a judgment was delivered on 21/03/2006. The Learned Trial Magistrate ordered that the three beneficiary should each get an equal share of the parcel of land.
3. The Applicant did not appeal the decision by the Learned Trial Magistrate and a Certificate of Confirmation was to be issued along those lines. It would appear that this did not happen. Instead, the Applicant filed an Application in the Lower Court on 08/03/2012 seeking certain orders to enable subdivision and transmission of the parcel of land. What emerged from the Application was that the Applicant had insisted on getting a bigger portion despite the Lower Court’s judgment of 21/03/2006. In the guise of distributing the estate, the Applicant had laid claim to the bigger portion which had been declared illegitimate by the Court.
4. As a result, the Applicant’s subsequent application filed in the Lower Court on 08/03/2012 was dismissed. The Court was candid in its assessment of the Applicant: “The Applicant’s application is surrounded with mischief, as he wants the Executive Officer to sign documents so as to achieve his own intentions at the expense of other beneficiaries. The Court will decline to grant the orders sought and dismiss the Applicant’s application with costs.”
5. After a lull lasting four years, the Applicant has now approached the High Court with an Application quite similar in its intentions to the Confirmation hearing and the subsequent Application in the Lower

Court. He now seeks revocation of the Letters of Administration issued and confirmed herein on two grounds:

- a. First, he argues that the Letters of Administration have become inoperative because the Respondents have refused to sign the necessary documents hence rendering the grant inoperative.
- b. Second, the Applicant argues that the proceedings leading to the grant and confirmation of the Letters of Administration were defective in substance and that they were issued fraudulently by making false statements and by concealment of material facts.

6. The Application for revocation of the Letters of Administration is opposed.

7. Both parties filed written submissions. Their counsels elected to wholly rely on the written submissions without the need to orally highlight.

8. After perusing through the documents filed, and on its face, the first ground relied upon does not stand scrutiny. If a party refuses to sign necessary papers in order for an estate of a Deceased person to be properly distributed, the solution is not to seek a revocation of the grant – but to approach the Court for necessary orders for the papers to be signed by the Executive Officer of the Court. A keen look at the history of this litigation will reveal that the Applicant has, indeed, used this avenue in the lower Court. However, his Application was declined because he sought to change the judgment of the Court respecting distribution in the guise of distribution.

9. What about the second reason for seeking revocation? He claims that the Letters of Administration – which, ironically, are issued to him – were obtained by fraud and concealment of material facts. What facts were concealed and what was the fraud? The Applicant says the fraud was the fact that his two brothers told the Court that they were supposed to get land equal in size to his while he was supposed to get a bigger portion!

10. The fact of the matter is that this was the very issue that was litigated in *Thika Chief Magistrate's Succession Cause No. 235A of 2004*. At the Conclusion of the case, the Trial Court gave a judgment making a finding that the parcel of land was to be divided equally among the three beneficiaries. The Applicant did not appeal against that decision. It follows that he cannot now, in the guise of seeking revocation, seek to reopen that closed litigation. It is improper to use the avenue provided in section 76 of the Law of Succession Act to contest the mode of distribution many years later after one had already participated in litigation in which a competent Court pronounced itself on the mode of distribution. The only recourse open to a party which is dissatisfied with the mode of distribution enunciated by a Court of competent jurisdiction is to appeal to a higher Court. That did not happen here. It follows that a Summons for Revocation cannot now be used to challenge the mode of distribution. It is not only an inappropriate procedure; it seeks to re-litigate an already decided issue.

11. Consequently, the Application dated 09/07/2014 is wholly without merit. It is hereby dismissed with costs.

12. Orders accordingly.

Dated and delivered at Kiambu this 7th day of June, 2018.

.....

JOEL NGUGI

JUDGE