



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

SUCCESSION CAUSE NO. 534 O 2011

IN THE MATTER OF THE ESTATE OF CHARLES AMUKWACHI – DECEASED

AND

THOMAS TIMONA LUSENO.....OBJECTOR

AND

VIOLET KEVELA INDUSA..... PETITIONER

RULING

1. These succession proceedings relate to the estate of *Charles Amukachi* and his late son *John Moshi*. The petitioner is a grand-daughter to Charles Amukachi (herein referred to as the deceased) and a daughter to John Moshi while the objector claims to be a grandson to the said deceased Charles Amukachi. The estate of the deceased comprises of land *Parcel No. Tiriki/Senende/61* which land is the subject matter in these succession proceedings.
2. The objector has filed an application dated 7th November 2013, seeking that the certificate of confirmation of grant issued to the petitioner on 8th May 2013 be annulled/revoked on the grounds that the petitioner applied for grant through fraud and concealment of material facts.
3. The application is opposed by the petitioner on the grounds that the petitioner is a grand-daughter to the deceased Charles Amukachi and that it is only she and her sister who are the only legal heirs to the estate of the deceased. Further that the objector is only a distant relative who has no right as a heir to the estate of the deceased
4. The objector's evidence was that the deceased herein was his grandfather. That the deceased's son John Moshi was living away from home. That he searched for the runaway son and brought him home. That the deceased's son was sickly. That the clan asked him to take care of the deceased's son and that if the deceased's son died his expenses would be taken care of by compensation from the deceased's parcel of land. That he took care of the deceased's son until when he died. He incurred expenses of upto Kshs.500,000/-. He is now seeking to be compensated with one acre from the deceased's estate. He said that he has planted trees on the land.
5. The case for petitioner is that her mother was married to the son of the deceased John Moshi but that the parents separated when the petitioner and her sister were young. That after the death of her father she and her sister filed a succession cause over the deceased's estate. She was issued with a grant of letters of administration that was later confirmed. The objector then filed a protest. She says that the objector is a distant cousin to her father. That the objector had been living with her father but that that does not give him the right to inherit her father's estate. She denied that her father's family had agreed to give the objector any land.
6. The objector called one witness – *Asugwa Mbasi DW2*. His evidence was that the objector is his clan mate. That he knew both John Moshi and his deceased father. That John Moshi was living in Namanga. The objector retrieved him from there and brought him home. That John Moshi had two daughters but he had separated with his wife. That the clan asked the objector to take care of John Moshi and that if John died he would be compensated by land from the estate of John Moshi. They signed an agreement to that effect dated 10th January 2002 but John did not attend the meeting as he was sick. The objector planted trees on John Moshi's parcel of land. He built John Moshi a house on the land. The witness said that he does not know the children of John Moshi. He agreed that the children of John are the only heirs of his estate.
- The petitioner called one witness – *Jeremiah Shazalah Siah DW2*. His evidence was that he is the chief of Senende location. Before then he was an assistant chief in the area. That both John Moshi and his father hailed from his area of jurisdiction. That John had a wife and 3 children but that one child died and two of them are alive. That he wrote the petitioner herein an introductory letter to be used in filing succession cause.
7. The witness further stated that the objector and John Moshi were clan mates but had no blood relationship. That the objector has planted trees on the land of John Moshi. He also built a toilet on the land. That the objector lives far from the suit property where he has his own

land.

DETERMINATION:

8. The application by the objector is under section 76 of the Law of Succession Act that states as follows:-

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)
- (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)
- (d)
- (e)

9. The objector stated in his evidence that the deceased Charles Amukwachi was his grand-father. He at the same time stated in court that the said deceased was only a clans-mate to his (objector's) father. This means that there was actually no blood relationship between the objector's father and the deceased. This confirms the evidence of the chief DW2 that the objector was only a clans-mate to the deceased and the deceased's son, John Moshi. The evidence by the objector that Charles Amukwachi was his grand-father was a lie. I find that the objector was only a clans-mate to the deceased Charles Amukwachi and not a blood relative.

10. The basis of the objector's claim is compensation for taking care of the petitioner's father, John Moshi, before he died. The question is whether the claim is tenable under the law of succession.

The petitioner did admit that the objector was at a certain period living with her father. It does appear that the objector was taking care of the petitioner's father before he died. However the objector does not claim that the petitioner's father ever gave him any land in appreciation to the services that the objector had accorded him. There is no evidence that the petitioner's father committed himself to refund any expenses incurred by the objector towards his upkeep. None of the family members who are said to have told the objector that he could be compensated from the estate of the petitioner's father was called to confirm whether this was true or not. In any case, if the petitioner's father never committed himself to the debt, the said family members had no authority to commit the petitioner's father to the debt when he himself was there to commit himself to the debt. If there was such an agreement, it was *null* and *void ab initio* as the said family members had no capacity to bind the petitioner's father in such an agreement. The objector was not a creditor to the estate of the deceased. He can only file a civil suit against the heirs to the estate of John Moshi to recover any money owing to the estate of John Moshi. He cannot demand for compensation from the estate of the deceased herein. The claim is untenable under the Law of succession.

11. The objector says that he has planted trees on the deceased's land. However the objector has not indicated why he planted the trees when he knew that the land did not belong to him. I find that this was a scheme by the objector to defraud the petitioner and her sister of their lawful inheritance. The objector was only an intermeddler to the estate of the deceased contrary to section 45 of the Law of Succession Act.

12. In her application for grant of letters of administration, the petitioner indicated that the deceased was survived by herself and her sister. The same information was contained in the summons for confirmation of grant. The objector has admitted that the petitioner and her sister are daughters to John Moshi. He has not denied that they are the legal heirs to the estate of the deceased. The information contained in the documents was therefore correct.

13. Though the objector is seeking for annulment/revocation of grant he is not seeking to be granted fresh grant. The court cannot revoke the grant and leave the matter at that. There is thereby a fatal defect in the prayers sought by the objector.

In the foregoing the objector has not proved that there was any fraud in the manner the grant was obtained. He has not proved what material facts were not disclosed when the grant was confirmed. The evidence adduced in court shows that the petitioner and her sister are the lawful heirs to the estate of the deceased herein. The application for annulment/revocation of grant is unfounded and untenable. The same is dismissed with costs to the petitioner.

Delivered, signed and dated at Kakamega this 13th day of July, 2017.

J. NJAGI

JUDGE

In the presence of:

N/Afor objector

N/A for petitioner

Paulcourt assistant