



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

SUCCESSION CAUSE NO. 301 OF 2003

In The Matter of the Estate of the Late M'Rimbera M'Ikunyua (Deceased)

AMARIA RIGIRI

CONSOLATA TANGITO.....PETITIONERS

VERSUS

REBECCA MUGURE MBOBUA.....PROTESTOR

RULING

[1] The Summons dated 10th October 2017 seeks the following orders:

- 1. THAT the Honorable Court be pleased to certify this application as urgent and hear it ex parte in the first instance.**
- 2. THAT the Honorable Court be pleased to issue an order of INHIBITION to inhibit all dealings with Parcel NO. ABOTHUGUCHI/GAITU 2355 & 2356 until this application is heard inter-parties and ruling delivered.**
- 3. THAT the Honorable Court be pleased to review its orders of 19th September 2017, set them aside and issue a fresh grant as appropriate.**
- 4. That the Honorable Court be pleased to summon one JOSEPH KAUNANGE to confirm who sold him his share.**

[2] The application is expressed to be brought under Rule 73 of Probate and Administration Rules CAP 160, Section 76 (D) (II) of CAP 160, Article 159 (2) (d) of the Constitution and all the enabling provisions of the law. The grounds upon which the summons is premised are set out in the application and the supporting affidavit sworn by Rebecca Mugure Mbobua on 10th October 2017. An allegation has been made that she sold part of the estate to one Joseph Kaunange Nabea yet it was the deceased who sold it prior to his death. It is argued that the said Joseph ought to be summoned to court to confirm the correct position on the matter. It was also urged that it was a misrepresentation to make the applicant get an equal share with other beneficiaries and yet it is the deceased who sold part of his estate.

Respondent: No discovery of new evidence

[3] The application was opposed through the replying affidavit of Amaria Rigiri sworn on 22nd February 2018. She deposed the affidavit upon the authority of the 2nd petitioner that no orders of review should be allowed as the applicant has not established any ground upon which the court can act. If the applicant knew that the land in issue was sold to the said Joseph Kaunange by the deceased she should have availed this during the hearing and called him as a witness. This is not new evidence the applicant has discovered. The applicant together with her family has gone ahead to inhibit the subdivision of the estate. She should not be allowed to delay the administration process and her application ought to be dismissed.

ANALYSIS AND DETERMINATION

Review

[4] By dint of Rule 63 (1) of the Probate and Administration Rules which is stated below, review and attendance of witnesses are some of the remedies that were imported into and may be applied for by a party in succession causes:-

“Save as in the Act or in these Rules otherwise provided, and subject to any order of the court or a registrar in any particular case for reasons to be recorded, the following provisions of the Civil Procedure Rules, namely Orders V, X, X1, XV, XV111, XXV, XL1V, and XL1X, together with the High Court (Practice and Procedure) Rules, shall apply so far as relevant to proceedings under these Rules.”

[5] I will therefore consider whether:

- 1. There has been a discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or the order made, or**
- 2. there is some mistake or error apparent on the face of the record, or**
- 3. For any other sufficient reason, a review of the decree or order should be granted; and**
- 4. Of course, the application was made without unreasonable delay.”**

[6] The fact that part of the estate was sold by the deceased to one Joseph Kaunange Nabea is not a discovery of new evidence or matter and does not warrant a review of decree herein or summoning of the person as a witness in this cause. The applicant has not shown this fact to be new information or which was not within her knowledge or which could not be produced at the time the judgment was passed. I also note that no one and nothing prevented her from calling the said person as a witness all these years the cause has been pending.

[7] Again, this is a probate and administration court whose jurisdiction is to determine the assets of the deceased, the rightful beneficiaries and distribute the estate to those beneficially entitled. Disputes concerning ownership of land are reserved to Environment and Land COURT (ELC) under Article 162(2) of the Constitution. See also limitation fo this court’s jurisdiction on matters of land in Article 165(5) of the Constitution.

Of revocation

[8] I should not close without considering the application for revocation under subsection (d) (ii) of the Law of Succession Act which states:

“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) ...

(c) ...

(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) ...

(e) ...”

[9] The applicant has not shown how the administrators, namely, Consolata Ngito and Amaria Rigiri, have failed to proceed diligently with the administration of the estate. Thus, he application does not meet the criterion laid down in law as to warrant revocation of a grant. on the other hand, the petitioners stated that the applicant is the one inhibiting the administration of the estate by use of threats. No person should inhibit or prevent administration of any estate no matter their grievances. The proper way is to apply for appropriate orders. Short of this, the person so interfering with the administration of the estate may be dealt with: (1) if a holder of grant of representation, *inter alia* under sections 94 and 95 of the Law of Succession Act; and (2) any other person., as intermeddling with the estate and may be punished under Section 45 of CAP 160 which states as follows:

“(1) Except so far as expressly authorized by this Act, or by any other written law, or by a grant of representation under this Act, no person shall, for any purpose, take possession or dispose of, or otherwise intermeddle with, any free property of a deceased person.

(2) Any person who contravenes the provisions of this section shall—

(a) be guilty of an offence and liable to a fine not exceeding ten thousand shillings or to a term of imprisonment not exceeding one year or to both such fine and imprisonment; and

(b) be answerable to the rightful executor or administrator, to the extent of the assets with which he has intermeddled after deducting any payments made in the due course of administration.”

[10] All parties should be aware that this court will not hesitate to impose any sanctions specified in law upon a belligerent party or person in order to enforce its orders or duty under the Law of Succession Act. For, now, I do not find any evidence on the petitioners or the applicant. Of great significance is that this application is unmeritorious and is dismissed. Nonetheless, in line with the duty of court, I direct that the administrators shall complete administration of the estate within six months. If any security is needed, the local police station shall provide security upon request by the administrators and not any other person. No one should inhibit or stop the process of administration of this estate lest such person should be dealt with under the law. This cause has been ongoing since 2003, and closure should be brought to the proceeding. It is so ordered.

Dated, signed and delivered in open court at Meru this 8th day of October 2018

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F. GIKONYO

JUDGE

In the presence of:

Mrs. Ntarangwi advocate for Petitioner

Mr. Ogoti advocate for applicants

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F. GIKONYO

JUDGE