



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NYAMIRA**

**SUCCESSION CAUSE NO. 214 OF 2015**

**PETER ANYONA MOSETI.....APPLICANT**

**VERSUS**

**JOSEPHINE BITUTU ANGWENYI.....RESPONDENT**

**RULING**

These proceedings relate to the estate of Angwenyi Mobaya, deceased, who according to the scanty information contained in this record died intestate on 12<sup>th</sup> July 1996 domiciled in Kebirigo in Nyamira County. Letters of Administration Intestate were issued to his widow Josephine Bitutu Angwenyi on 4<sup>th</sup> January 2016.

On 22<sup>nd</sup> April 2016 the Administratrix filed summons for confirmation of the grant notwithstanding that six months had not elapsed from the date the letters of administration were issued. Together with the prayer for confirmation she also sought a declaration that the subdivision of LR West Mugirango/Bosamaro West/572 into parcels West Mugirango/Bosamaro West/2225/2226 and 2227 was illegal, null and void. The application was supported by an affidavit sworn by the Administratrix on 22<sup>nd</sup> April 2016 in which she identified the mode of distribution as equally between the two houses of the deceased.

The application for confirmation was heard by my predecessor, Nagillah J on 22<sup>nd</sup> July 2016 and both prayers allowed. Thereafter on 30<sup>th</sup> August 2016 Peter Anyona Moseti (the applicant) filed the summons for revocation or annulment of grant dated 30<sup>th</sup> August and sought orders that: -

**(a) Spent**

**(b) That pending the hearing and determination of this application there be an order of stay of execution of the orders of this Honourable court made on 22/7/2016 for cancellation and/or revocation of title NOS. WEST MUGIRANGO/BOSAMARO WEST/2225, 2226 and 2227.**

**(c) That the grant of letters of administration to the petitioner herein on 4/1/2016 and confirmed on 22/7/2016 be revoked and/or annulled.**

The application is premised on grounds that: -

**(a) The alleged estate of the deceased herein being land parcel NO. WEST MUGIRANGO WEST/572 was not existent at the time of filing this cause.**

**(b) The petitioner herein concealed from this Honourable court the interest of the objector herein, Alex Omayo Bundi.**

**(c) This petitioner herein misled this Honourable court to cancel titles to land parcels NO WEST MUGIRANGO/BOSAMARO WEST/2225, 2226 and 2227 without notice to the registered owners.**

**(d) The petitioner herein failed and/or neglected to obtain the consents from all beneficiaries of deceased Alex Omayo Bundi and the objector herein which application will be grounded upon the affidavit of PETER ANYONA MOSETI filed herewith, the nature of the case and the reasons to be offered.**

It is supported by an affidavit sworn by Peter Anyona Moseti, the applicant on 26<sup>th</sup> August 2016 in which he reiterates that the prayer for cancellation of the titles was granted without giving the holders of those titles a hearing. When the Advocates for the parties came before me on 12<sup>th</sup> July 2018 they agreed to canvass the summons by way of written submissions. The submissions were duly received. Section 76 of the Law of Succession Act states: -

**“76. Revocation or annulment of grant**

**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.”**

This court therefore has power to revoke a grant whether confirmed or not. I have considered the record before me and the submissions of the Advocates for the parties. The first thing I noted is that the petition herein is not complete as there is no affidavit in support of the petition for Letters of Administration Intestate (Form P & A 7). That affidavit is the one that sets out the assets and liabilities of the deceased. If it was filed, it is missing from the record. There is also no copy of the official search attached either to the petition or to the summons for confirmation of grant. It is not therefore clear what asset the Administratrix was to distribute to the beneficiaries and whether it in fact belonged to the deceased. Indeed, in that same application, she sought a declaration pertaining to land parcels which it was not very clear whether they were part of the estate of the deceased. I note from the summons that she did not disclose the grounds for that application either in the face of the summons or in the supporting affidavit. All she did was to seek a declaration that the sub-division was illegal, null and void. Neither did she enjoin the beneficiaries of the resultant sub-division as parties to the application. That clearly was against the rule of natural justice. I see in her replying affidavit that she has deposed that the subdivision of the asset was done fraudulently and that the applicant is facing forgery charges in the lower court. She has also submitted and this is reiterated in the submissions of Mr. Ombachi, Advocate, that the applicant is not a beneficiary to this estate and that to allow this application is tantamount to ratifying **“illegal transactions”** done by the applicant. Be that as it may, I am persuaded that the application has merit. No reasons at all were given by the Administratrix to support application for the declaration that the subdivision of the land parcel was illegal, null and void. Secondly, the proprietors of the said parcels were not made parties to the application which is against the rules of natural justice. Whether the subdivision was fraudulent or not is a matter still under adjudication in Nyamira CM Criminal Case No. 350 of 2013 and the Administratrix must await the outcome of that case before she includes them as assets of this estate. That is not to say that this court has made a declaration that the applicant is the lawful or rightful owner of the parcels. That will be determined once the criminal case in the court below is determined. For now, the certificate of confirmation of grant shall be revoked. The Administratrix shall apply for confirmation of grant once the criminal case in the court below is heard and determined. In order to preserve the parcels LR West Mugirango/Bosamaro West/2225, 2226 and 2227 and in furtherance of the inherent powers bestowed upon me under Rule 73 of the Probate and Administration Rules, I hereby order that there shall be no dealings on the said properties whether by the Administratrix or the applicant or other registered proprietors pending the hearing and determination of this Succession Cause. Each party shall bear their own costs.

It is so ordered.

**Signed, dated and delivered at Nyamira this 8<sup>th</sup> day of November 2018.**

**E. N. MAINA**

**JUDGE**