



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

P&A CAUSE NO.437 OF 2012

IN THE MATTER OF THE ESTATE OF LATE MUTHAMA NGULI (DECEASED)

ANGELINA NZULA NZIOKI)

KIMEU MUTHAMA).....OBJECTORS/APPLICANTS

MUISYO MUTHAMA)

VERSUS

KATUNGE MUTHAMA NGULI.....ADMINISTRATOR/RESPONDENT

MUTUKU MUTHAMA.....RESPONDENT

RULING

1. The Objector/Applicants filed a summons for revocation of grant dated 15/1/2018 seeking for the following reliefs namely:-

(a) That the grant of letters of administration issued to Katunge Muthama Nguli on 26/07/2012 and the Certificate of Confirmation of Grant issued on 14/06/2013 with respect to the estate of Muthama Nguli be annulled and/or revoked.

(b) That any distribution, transfers and disposition of any kind and/or by the Administrator of land parcel title Number **MBIUNI/MUMBUNI/126** and **691** be declared unlawful, null and void and the registration of the said properties be restored in the name of Muthama Nguli (deceased).

(c) That the costs of the application be borne by the Respondents.

2. The Application is supported by the grounds on the face of the application as well as by the affidavit of the Objectors/Applicants sworn on even date.

3. The Applicants case is that the Administrator herein is their mother while the second Respondent is their brother. It is further the Applicants case that the grant was obtained fraudulently by failure to disclose all the beneficiaries who were rightfully entitled to inherit a share of the deceased's property. It was also the Applicant's contention that they had been duped to believe that the only title was being transferred to Mutala Mwololo (a purchaser) was **L.R. No. MBIUNI/MUMBUNI/691** yet the deceased also owned parcel **MBIUNI/MUMBUNI/126** which has now been unlawfully taken over by the 2nd Respondent to the exclusion of the Applicants who had been occupying part of the said land. Finally it was contended by the Applicant's that the 2nd Respondent has since filed a land case being **Machakos ELC No. 144 of 2015** seeking to evict the Applicants from the said land yet they had been residing thereon during the lifetime of the deceased. It is on these grounds that the Applicants feel that the actions of the Respondents is to disinherit them from the estate of the deceased and thus the need to revoke the grant.

4. The Application was not opposed by the Respondents who upon being duly served failed and or neglected to file a response thereto.

5. Revocation or annulment of grant is provided for under Section 76 of the Laws of Succession Act in that a grant of representation whether or not confirmed may at any time be revoked or annulled if the following instances are shown:-

(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) That the grant was obtained by means of an untrue allegation of a fact essential on point of law to justify the grant notwithstanding that the allegations was made on ignorance or inadvertently.

6. The above two scenarios appear to me to be quite relevant in this matter as far as the objectors claims can be discerned. The grant of letters of administration was duly issued to the 1st Respondent on the 26/07/2012 and the same was confirmed on the 14/06/2013. The summons for confirmation of grant only had one property for distribution namely **MBIUNI/MUMBUNI/691**. The draft of the confirmation of grant as well as the proposed schedule of distribution had the said property listed as the only one for distribution. However the certificate of confirmation that was subsequently issued included a new property namely **MBIUNI/MUMBUNI/126** which was said to be allocated to the 2nd Respondent. It is apparent that this particular property had not been disclosed and had been agreed upon by the beneficiaries to form part of the assets for distribution. The property aforesaid indeed belonged to and registered in the name of the deceased Muthama Nguli and which should have been included in the schedule of distribution and agreed by the beneficiaries. It is obvious that the new property must have been sneaked in during the preparation of the certificate of confirmation of grant since even the draft of the confirmed grant did not include the said property. There must have been some real mischief and it is no wonder therefore that the Objectors now feel that they have been ambushed by the Administrator and the 2nd Respondent. It is clear that the Administrator had a sinister motive in failing to include the property namely **MBIUNI/MUMBUNI/126** in the schedule of distribution and only sprang it up at the collection of the certificate of confirmation of Grant. The administrator has not explained how the said property ended up being owned by the 2nd Respondent alone yet the family members had not agreed and signed a consent in that regard. The actions of the administrator and 2nd Respondent have thus disinherited the Objectors and other beneficiaries to the estate. The Administrator must have definitely connived with the 2nd Respondent behind the Objectors and other beneficiaries to ensure that the rest did not suspect any foul play on their part and proceeded to execute their mission during the preparation of the certificate of confirmation. It is possible that the family members might have agreed to first proceed with the cause over the one property **MBIUNI/MUMBUNI/691** so as to transfer it to the purchaser and thereafter come back and deliberate on the remaining family property namely **MBIUNI/MUMBUNI/126**. This would explain why the two properties were not put in the schedule of distribution together. It was therefore a shocker for the Objectors to discover that the remaining family property had been transferred to the 2nd Respondent behind their back. The conduct of the administrator in sneaking in the new property without the consent of the Objectors and beneficiaries was clearly in bad faith and fraudulent at best. This was an untrue allegation of a fact essential on point of law to justify the grant herein being annulled and or revoked. As the family members had not been involved or consulted over the distribution of the new asset, the grant herein must be revoked. Already one of the Objectors and 2nd Respondent are involved in an ELC Suit being **Machakos ELC No. 144 of 2015** stemming from the above state of affairs. It is necessary to revoke the said Grant so that the family members would go back to the drawing board and approach the court with the proper way forward.

In order to preserve the assets of the deceased, conservatory orders are necessary pending further orders.

7. In the result it is the finding of this court that the Objectors Application dated 15/1/2018 has merit. The same is allowed in terms of prayers (2) and (3). As the matter involves family members there shall be no orders as to costs.

Orders accordingly.

Dated, Signed and Delivered at Machakos this 21st day of November, 2018.

D. K. KEMEI

JUDGE