



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

MISCELLANEOUS APPLICATION NUMBER 3 OF 2014

IN THE MATTER OF THE ESTATE OF JOSHUA WANJOHI MATU (DECEASED)

RULING

1. Pursuant to orders of this court vide its ruling dated 7/2/2017, Harrison Maina Ndiritu (petitioner), Zacharia Mumburi Matu (applicant), Samuel Mithaa (chief – Kimathi Location) and Naftali Mwangi (assistant chief – Mutitu Sub-location) were summoned by court for purposes of giving clarity in a case conference the facts of this case to enable the court give appropriate directions as to the hearing of this matter.
2. A brief background to the matter is to the effect that the petitioner had presented himself as a son of the deceased herein. This fact is contested. The respective chiefs and the applicant were summoned to shed light.
3. Despite evidence of proper service, the petitioner failed to appear in court on the date appointed.
4. Naftali Mwangi (assistant chief Mutitu Sub-Location) appeared in court following a summons served on him. He stated that his letter confirming that Zacharia Mumburi Matu was a son of the deceased was based on information he received from assistant chief Ngoria and a village elder one Elijah.
5. He visited the home of Zacharia Mumburi Matu and confirmed that Wanjohi Matu, the deceased herein was buried in that homestead.
6. The original record from the Principal Magistrate's Court at Nyahururu has been availed.
7. In the form P&A 5, the petitioner did not indicate that Zacharia Mumburi Matu was a son to the deceased. Indeed, the petitioner indicated he was the only heir. He is a grandson to the deceased.
8. On the material before court and the letter from Naftali M. Mwangi assistant chief, Mutitu Sub-location, the claim by the applicant is given credence.
9. In view of the letter by chief Samuel Mithaa, chief Kimathi Location, the petitioner is stated as the rightful heir. The petitioner is a grandson to the deceased. He cannot have priority in the administration of that estate of the deceased.
10. It follows then, therefore, that the grant issued to Harrison Maina Ndiritu is clouded with non-disclosure and concealment of material facts.
11. The grant cannot therefore stand.
12. The determination of the summons for confirmation of grant dated 22nd February, 2014 must fall in the applicant's favour.
13. With the result that, I allow the application dated 22nd February 2014 and make the following orders;
 1. **The grant of letters of administration issued on 10/3/2011 and confirmed on 19/10/2011 be and is hereby revoked.**
 2. **Any transfer of title by the petitioner to himself or to a 3rd party pursuant to the certificate of confirmation of grant issued on 10/10/2011 in Nyahururu Principal Magistrate's Succession Cause Number 124 of 2010 be and is declared null and void and cancelled forthwith.**
 3. **A grant of letters of administration to issue in favour of Zacharia Mumburi Matu.**

4. Harrison Maina Ndiritu shall be served with future processes in this matter to protect his interest in the estate if any.

5. The administrator is to take out a summons for confirmation of grant within 90 days hereof which summons shall be served on all beneficiaries.

6. The certificate of confirmed grant is hereby recalled for cancellation.

7. Each party to bear its own costs.

Dated and Delivered at Nakuru this 13th day of December, 2018.

A. K. NDUNG'U

JUDGE