



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT ELDORET

P&A CASE NO. 26 OF 2014

IN THE MATTER OF THE ESTATE OF THE LATE PIUS RUTO BIRIR (DECEASED)

BENARD KANGONGO RUTTO

ROBINSON RUTTO.....APPLICANT/RESPONDENTS

VERSUS

KIPCHIRCHIR CHERUTICH.....RESPONDENT

RULING

The Objector/Applicant filed summons for revocation of grant dated 10th day of February 2016 founded on the grounds that:-

- (1) The grant of letters of administration made to *Benard Kangogo Rutto* and *Robinson Rutto* in respect of the estate of *Pius Birir Rutto* was obtained by fraud.
- (2) The property and/or land parcel No. Irong/Kitany/194 mentioned in form No. 5 in this matter belongs to the objector/applicant and is the subject of court proceedings.
- (3) That the parcel of land Irong/Kitany/194 is the subject matter in Eldoret Environment and Land court which is pending determination.
- (4) The Petitioners/Respondent are untruthful and have come to court with clean hands.
- (5) The Petitioners/Respondents concealed material facts to court hence this application.
- (6) This court has power to entertain and grant the instant application in the best interest of justice for all.
- (7) The Petitioners/Respondents actions are orchestrated with malice and bad faith.
- (8) This application is made promptly and in good faith.
- (9) No prejudice will be suffered by the Respondents should the orders sought issue.
- (10) The contest on ownership of the subject land is still pending before the Eldoret Environment and Land court.

The applicant, in his supporting affidavit sworn on 10th day of February 2016 disclosed that the only property mentioned in probate and administration Form No. 5 of these proceedings is IRONG/KITANY/194 and is the subject of Eldoret Environment and Land Cause No. 78 of 2013 pending in court. The applicant claims that the said land belongs to him and he is in actual physical occupation and possession of the same. The dispute arose as the said land was erroneously registered in the name of PIUS BIRIR RUTTO, his immediate neighbor. The applicant further avers that the Petitioners/Respondents can only purport to claim the subject land after the case pending in the Environment and Land court is finalized in their favour. They obtained a grant of letters of administration without full disclosure of the material facts as to the assets of the deceased.

The Respondents in their Replying affidavit sworn on 6th day of June 2016 avers that:-

The application is fatally defective for want of compliance with the provisions of Section 68 and 69 of the Law of Succession Act Cap 160. The applicant is not a defendant as per section 29 of the said Act and is therefore incompetent to move the court. Proprietorship of the suit land cannot be determined in a succession cause.

The Land and Environment court has jurisdiction to issue orders of injunction and or even cancellation of Title should the court find the applicant's suit meritorious.

I have weighed all that has been presented before this court by both parties. *Section 76(a) of the Law of Succession Act Cap 160* states that:-

“A grant of representation whether or not confirmed, can at any time be revoked or annulled if the court decides, either an application by any interested party or of its own motion –

(b) that the grant was obtained fraudulently by the making of a false statement or by concealment from the court of something material to the case”

The Petitioners/Respondents filed Succession Cause No. 26 of 2014 on 30th June 2014. There is no dispute in this matter that by then Eldoret Environment and Land Court Case No. 78 of 2013 was still pending, having been filed the previous year. The Petitioners/Respondents did not disclose of the fact that in the Succession Cause No. 26 of 2014, the only asset disclosed to belong to the deceased is land parcel No. IRONG/KITANY/194

of which ownership is in contention in Eldoret Environment and Land Court Case No. 78 of 2013. There is no any other asset to be administered by the Petitioners/Respondents, save for this particular land. Though registered in the name of the deceased, one PIUS RUTO BIRIR, the ownership is in dispute and pending determination. This fact ought to have been disclosed by the Petitioners/Respondents and did not.

Though the Petitioners/Respondents in their submissions allege that the suit to determine ownership of the said land was dismissed for want of prosecution, they have not disclosed when it was dismissed and nor have they attached the dismissal order or proceedings. In their replying affidavit they did not aver such, which makes the allegation doubtful. The confirmed grant paves way for the Petitioners/Respondents to share out the land amongst the beneficiaries. If this happens and the Objector/Applicant wins the pending suit on the said land ownership, reversing the process would be much harder. The Applicant/Objector has also averred that he is in occupation of the said land which is also a challenge on subdivision of it to the beneficiaries.

Given the circumstances, it would be at interest of justice to revoke the grant made on the 26th June, 2014. It is hereby revoked.

S. M GITHINJI

JUDGE

DATED, SIGNED and DELIVERED at ELDORET this 13th day of December 2018.

In the absence of:-

The objector

The petitioner

And in the presence of Mr. Mwelem- Court clerk