



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

SUCCESSION CAUSE NO. 269 OF 2003

IN THE MATTER OF THE ESTATE OF JASON MUTUERANDU KIARIE (DECEASED)

PHILISINA IGOKI JOHASON.....PETITIONER

VERSUS

SAMSOM KIMATHI MACHUGUMA.....OBJECTOR

SARAH MUTUERANDU.....OBJECTOR

AND

EUNICE KABITI ZECHARIA.....PROTESTOR

AND

JASON MUTWERANDU.....PROTESTOR

Ruling

Grant of letters of Administration to the estate of the late Jason Mutwerandu Kiarie was made on 14th October 2014 to Philsina Igoki Johnson. This Honourable Court vide a grant of confirmation of Grant issued on 7/5/ 2018 distributed the estate of the deceased as per the schedule of distribution of the estate.

The applications therefore pending this Court's determination are;

The Applications dated 11th September 2018 by the protestor, Elizabeth Kabiti Zecharia praying that this Honourable Court to compel the Petitioner to transfer 8 acres in land Parcel No. Abogeta/U-Kiungone/2362 to herself or in the alternative to direct the Deputy registrar to sign the relevant transfer documents to give effect to the court's Ruling dated 17/5/2018.

The application dated 24th September 2018 by the petitioner praying that this Honourable court be pleased to issue an Order the Officer Commanding Police Station (OCS) Murugune Police station to Offer security during subdivisions of the land parcels detailed in the confirmed grant dated 17th May 2018.

Lastly the Application dated 2nd October 2018 by the Protestor, Jameson Muterandu praying that the grant of letters of administration issued to the petitioner herein and confirmed on 17/5/ 2018 be revoked and/or set-aside.

This Honourable Court On 9th October 2018 already made orders allowing Prayer (1) of the application dated 11th September 2018 hence the same compromised the Application. The Court equally directed that the Certificate of Confirmation of grant be corrected to show that the one (1) acre out of L.r. Abogeta/ U-kiongone/2362 is to be held in trust by the Administrator.

Both Parties have equally filed submissions to the aforesaid Applications.

The issues that have been left for this Court to determine and that have been raised by the Application dated 24th September 2018 and 2nd October 2018 may as well be compromised as hereunder;

A. Whether this Honourable Court should revoke set- aside/revoke the Grant issued on 7/5/2018?

B. Whether this Honourable Court should provide Security to the Petitioner?

Whether this Honourable Court should revoke set- aside/revoke the Grant issued on 17/5/2018?

Circumstances in which a grant of representation may be revoked or annulled are provided for in **Section 76 of the Law of Succession Act** that provides thus:

“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.”

The protestor herein, Jameson Mutwerandu, lodged the Application on the ground that he was neither consulted before filing for the confirmation of grant, asked to execute any consent to the mode of distribution of the estate nor made aware of the date of the confirmation of grant.

He also avers that there was no consent attached to the mode of distribution of the estate and that the Confirmation of grant is irregular since not all the beneficiaries were in Court.

The petitioner herein petitioned for letters of Administration with will annexed on 29th July 2003. James Machuguma Mutuerandu (the protestor herein) and Sarah Karambu Mutendarwa filed an objection to making of the Grant on 29th September 2003. The Application dated 1 October 2012 and objections were however marked as withdrawn by the Hon. Makau. J. on 14th October 2014 and Letters of Administration issued to the Petitioner and Agnes Kakiru.

On 8th March 2017 the following beneficiaries appeared in Court and Confirmed that they were in agreement that the estate should be distributed as per the minutes of the family meeting held on 29th May 2010. The beneficiaries included; **Philisina Jason, Gladys Mugure Benson, Jackson Mwitii Macigima, Jameson Mutuerandu, Rose Nkirote Kithinji, Rosaline Karimi Kimathi, Sarah Karambu Mutuerandu, Douglas Kiogora Kiarie, Denis Kinyua Kiarie, Christine Makena Kiarie, Royal Munene *Kanani.**

THE Court also made directions that **the above beneficiaries above listed presence is dispensed with during the confirmation. Only Petitioners and Interested Parties to attend(Emphasis mine)**

The petitioner filed Summons for Confirmation of grant on 3rd October 2017 seeking to distribute the same in line with Paragraph 6 of her supporting affidavit. The objector and interested party filed their submissions in protest to the Confirmation of Grant and the Court thereafter made a Ruling on 17th May 2018 distributing the estate with the exclusion of one (1) acre that was in dispute between the interested party and the objector.

It is therefore clear from the record that the protestor was not only aware of the nature of the proceedings from the year 2003 to present day but he also confirmed the proposal to the nature of distribution made by the Petitioner. The minutes of the family meeting also show that he was aware of the same, since he is listed as being absent with apology. On 8th March 2017 his attendance in Court was not only confirmed by his physical appearance but he equally issued his national Identity card bearing Nos. 6684467. If he had any objection to the mode of distribution he would have raised the same at this particular time.

With the petitioner relying solely on the lack of consent and not being informed of this proceedings the same has not been justifiably proven on a balance of probabilities.

Whether this Honourable Court should provide Security to the Petitioner?

It is instructive upon a Court to ensure that its Orders are not only adhered to but obeyed in equal measure. The petitioner herein being an Administrator deserves the protection of this Honourable Court during the Conduct of this duties. This protection will entail the conferment of specific Orders that would facilitate the conduct of his/her duties as enshrined in **Section 83 of the Law of Succession Act**.

The grounds raised by the petitioner is that the objector, Jameson Kimathi Mutwerandu has failed to cooperate with other members of the family and that he has embarked on threatening to occasion grievous bodily harm to the surveyors who have been appointed by the family to subdivide the subject matter.

The sentiments of the petitioner raises weighty allegations that influences this court to believe that the petitioner and/or his agents and representative warrant the protection of this Honourable Court.

For the foregoing Reasons I hereby Hold;

(i) That the Application dated lacks merit and the same is hereby dismissed

(ii) That the Officer Commanding Station (Ocs) Murungurune Police Station to offer security during the subdivision of the land parcels detailed in the Confirmed grant dated 17th May 2018.

Applicants to pay costs of application for revocation.

HON A'ONG'INJO

JUDGE

6.12.2018

Before Adwera J

Kinoti –C/A

Mr Kimathi holding brief for Mwirigi Advocate for Applicant

Mr Gichunge holding brief for Munene advocate for petitioner

Ms Wambugu Holding brief for Ms Mutua for 1st protester.

Court

Ruling delivered, dated and signed in court on 6th December 2018

HON. A.ONG'INJO

JUDGE