



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
SUCCESSION CAUSE NO. 2346 OF 2013

IN THE MATTER OF THE ESTATE OF KAHACHO MACHARIA (DECEASED)

RULING

The Ruling of this Court of 7th November, 2014 stopped subdivision and transfer of the suit properties **LOC.1/KIRWARA/35, LOC.1/KIRWARA/932, LOC. 1/KIRWARA/933 and LOC.1/KIRWARA/35934** upon the hearing and determination of the application filed on 12th September, 2013. The application was heard and it culminated with Court order of 11th March, 2016. The grant was revoked and new grant issued Regina Nduta Kahacho. On 5th October, 2015 this Court's further Ruling on 8th April, 2015 the Respondent Wambui Kariru widow of Danson Kariru was in contempt of the Court orders of 19th November, 2014.

The Court found from the proceedings and Judgment of Thika Chief Magistrate's Court Succession Cause No. 530 of 1987 the Respondent had obtained one acre in 1972 and Esther Wanjiku Kahacho was left with 3.3 acres of L.R. LOC 1/Kirwara/35. The judgment was not appealed against.

On 12th November, 2015 the Applicant Racheal Wanjiru Mwangi pursued on behalf of her mother Esther Wanjiku Kahacho who is suffering ill health the revocation of grant of 1st September, 2013 issued Succession Cause No. 530 of 1987, in Thika Law Courts on the basis that, Thika Law Courts trial Court was not informed of the true facts of the matter.

She relied on the following grounds;

- 1. The letters of administration were fraudulently obtained as material facts had been concealed to the Court.**
- 2. Danson Kariru is neither a relative nor a member of the family of Kahacho Macharia (Deceased).**
- 3. The family of Kahacho Macharia (Deceased) have applied for revocation of grant and the same is pending before this Honourable Court.**
- 4. Danson Kariru passed on and his wife Wambui Kariru now wants to bury his remains on the property of Kahacho Macharia (Deceased) being property LOCI/KIRWARA/1/35 and subdivisions LOCI/KIRWARA/932, LOCI/KIRWARA/933 and LOCI/KIRWARA/934.**
- 5. What is deponed to herein is true to my information and belief save where otherwise so stated.**

As indicated in the Supporting Affidavit to the application for summons for revocation of grant. The Applicants stated that the Title of land to Danson Kariru was revoked when there was an elders meeting and Wanjiku Kahicho was asked to refund the money paid as purchase price and she did. There facts are confirmed by the attached translated proceedings of the elders meeting produced during the hearing.

Despite service of the application the Respondent did not file a Replying Affidavit and/or attend Court or provide any evidence for the Court to consider. The application for revocation of grant that proceeded ex parte was granted as per the Court orders of 11th March, 2016.

The Applicant then filed the application of 27th October, 2016 which was compromised as follows;

1. That Land Registrar with regard to this Court’s Ruling of 5th October, 2015 to register the caveat by the Applicant.

2. The Applicant to file summons for confirmation of grant.

The Applicant filed certificate of urgency on 27th October, 2016 for summons for confirmation of grant. The parties appeared in Court on 13th December, 2016. Some of the beneficiaries did not turn up. Thereafter the matter was mentioned on 20th December, 2016 all parties were absent. On 1st February, 2017 the Court file was not brought to Court and 14th February, 2017 the Court ordered witness summons by the Deputy Registrar Family Division be issued to the remaining members as they did not attend Court.

On 14th February, 2017 the Applicant appeared in person and confirmed witness summons were issued and the other parties did not come to Court.

In the absence of the remaining beneficiaries and the non explanation from them on the circumstances or any protest filed, the Court confirms the grant of 29th February, 2016 and the application of 27th October, 2016 is granted.

DELIVERED DATED & SIGNED IN OPEN COURT ON 16TH FEBRUARY 2017.

M. W. MUIGAI

JUDGE

IN THE PRESENCE OF:

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