



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

SUCCESSION CAUSE NO. 3 OF 2014

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

ZACHARIA MUMBURI MATU.....APPLICANT/BENEFICIARY

VERSUS

HARRISON MAINA NDIRITU.....PETITIONER/RESPONDENT

RULING

INTRODUCTION

1. **ZACHARIA MUMBURI MATU** (herein the applicant) has moved this court vide a summons for revocation and/or annulment of grant dated 22nd February, 2014.

He seeks orders:

1. Spent
2. Spent
3. Spent

4. THAT the grant of letters of administration and certificate of confirmation issued on 10th March, 2011 and 19th October, 2011 respectively in Nyahururu PMCC Succ.124 of 2010 be revoked and/or annulled.

5. THAT any distribution done by the Petitioner pursuant to the certificate of confirmation issued on 19th October, 2011 in Nyahururu PMCC Succ.124 of 2010 be declared null and void and be cancelled forthwith.

2. He has laid four (4) grounds in support of the application namely:

- a) The Nyahururu Principal Magistrate did not have the jurisdiction to hear and determine the distribution of the estate of the deceased as the estate net worth was over Kshs.100,000/=.
- b) The Petitioner did not disclose to the court that he was not a beneficiary of the estate as is related to the deceased by virtue of being a grandson to the deceased, whereas the applicant is a son to the deceased and yet was not involved and/or considered in the said succession cause.
- c) The Petitioner was not entitled to benefit in any way in the estate as he was not a dependant of the deceased.
- d) The Petitioner distributed all the deceased estate to himself.

The summons is further supported by his affidavit sworn on the 22nd day of February, 2014 and a supplementary affidavit sworn on the 2nd October, 2014.

THE APPLICANT'S CASE

3. The gist of the applicant's grounds and affidavit in support is that the Principal Magistrate at Nyahururu did not have the necessary jurisdiction to hear the matter as the estate was worth over Kshs.100,00/=.

4. The applicant was omitted from the cause yet he is a son to the deceased whereas the respondent is a grandson and he (the respondent) distributed the entire estate to himself.

ANALYSIS AND DETERMINATION

5. No doubt there appears on the face of its serious irregularities that would render the confirmed grant revocable.

6. Despite the Deputy Registrar of the court having called for the original file at Nyahururu Principal Magistrate's Court, the file was not availed. I am therefore disadvantaged in that I am unable to verify the facts stated in this application.

7. Consequently, I make a finding that this application was not ripe for hearing before the file in which earlier orders were made was availed to this court.

DIRECTIONS

8. The Chief Magistrate at Nyahururu Law Courts is hereby ordered to avail to the Deputy Registrar of this court file No.PMC Succ.Cause No.124 of 2010.

9. To facilitate a case conference (noting that the issues herein appear clear cut), a summons to appear in court is to issue to the following persons:

- i. Harrison Maina Ndiritu , Petitioner/Respondent
- ii. Zacharia Mumburi Matu, Applicant
- iii. Samuel N. Mithaa, Chief Kimathi Location
- iv. Naftali M. Mwangi, Assistant Chief, Mutitu Sub-location

10. This matter be mentioned in a months time for a case conference and further directions.

Dated, Signed and Delivered at Nakuru this 7th day of February, 2017.

A. K. NDUNG'U

JUDGE