



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT ELDORET
PROBATE & ADMINISTRATION CAUSE NO. 187 OF 2007
IN THE MATTER OF THE ESTATE OF RICHARD KIPLAGAT
NG'ETICH.....DECEASED

RULING

This matter came up in court yesterday for the hearing of the application dated 15.8.2016 of the 3 Applicants. The same brought under S.76 of the Law of Succession Act and Rule 44 of the Probate and Administration Rules, basically seeks 2 prayers: -

- (i) That the grant of letters of administration intestate in the estate of the late Paul Pyeko Pyeko (deceased) issued to the 4 Respondents confirmed on 28.2.2011 vide Succession Cause No. 276/99 be rectified.
- (ii) That pursuant to the above prayer, the land parcel No. LR NO. 4793, registered in the name of S/O Pyeko and Kiplagat S/O Kipngetch be shared equally between their 2 estates.

Having perused the affidavits of service sworn and filed by Vincent O. Ogutu, and being satisfied that the Respondents were duly served and were absent with no explanation, the court ruled that the case could proceed as fixed. Counsel for the applicants proceeded to submit, basically replying on the affidavit and the annexures to it. The court differed the ruling on the same so as to peruse both the proceedings and the pleadings on record. I have now done so. The issue for determination is whether this application has merit and whether the orders sought can issue as prayed. The application is brought under S.76 of the Act on revocation or annulment of grant i.e.

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

The above provision uses the word may. This to me, implies that even if the circumstances listed thereunder for revocation or annulment are proved, the court may still not issue the orders of revocation or annulment. In effect therefore, it is the opinion of this court that such orders would issue depending on the circumstances of each case.

It is however noted that whereas this application is brought under S.76 (as above), the prayer in the body is of rectification Under Rule 44, i.e.

“where any person interested in the estate of the deceased seeks pursuant to S.76 to have a grant revoked or annulled, he shall, save where the court otherwise directs, apply to the High Court.....”.

Rule 44 gives the procedure to be followed for an application for revocation or annulment. It is not for rectification as prayed for in Prayer 2 of the application (rectification is Under Rule 43).

So, are the circumstances herein such that these orders may issue? In answering this, I have considered the following: -

(i) It is clear that both the applicants and the respondents had independently applied for and obtained grants in respect of the estates of the 2 deceaseds i.e. Succession Causes Nos. 187/2007 and 276/1999. The said grants were duly confirmed and are separately held by the respective parties.

(ii) From the list of beneficiaries of the estate of the late Paul Pyeko Pyeko (deceased), the applicants do not appear, confirming that they are not such beneficiary of that estate. This fact must have been within the knowledge of applicants who independently applied for grant in respect of the estate of Kiplagat S/O\ Kipngetich (deceased).

(iii) In their own application for grant, the applicants therein declared deceaseds property to be 260 acres.

(iv) The grant issued to the Respondents was confirmed way back on 28.2.2011, about 6 years ago. It is not known if distribution of the property to the beneficiaries has been completed or if there are any 3rd parties now in occupation of same. Or even if it has been sold off (or part of it). If distribution is complete, whose share would be hived off to satisfy the applicant's claim (if at all)?

(v) It is not explained when and how the applicants who have always held (and possibly occupied) their portion came to know of the true acreage of the 2 estates, and why it has taken the applicants this long to raise this claim. And has there been any arrangements orally or in writing as to specific shares of the 2 estates of the deceaseds either before the deceased's passed on or after their deaths?

(vi) Lastly, I have considered the huge size of this property (said to be 305.5 acres) and the equally big number of occupants as reflected on the lists of beneficiaries. Obviously should this grant be revoked or annulled or rectified in the manner urged, there is likelihood of threat to peace, law and order.

This court notes further that the claim of the applicant seems to be based on the certificate of title annexed (annexture B). In view of this, and the above observations, this court is of the opinion that this is a matter that can only be resolved fairly and justly when the parties are accorded the opportunity to give evidence and to call witnesses through a full trial. It is for these reasons that I am not convinced that the orders sought vide this application can issue. I decline to grant the same. I accordingly dismiss this application wholly. Costs shall be in the cause.

DATED, SIGNED and DELIVERED at **ELDORET**, this 8th day of February 2017.

D.O. OGEMBO

JUDGE

Ruling read in open court in English (interpreted to Kiswahili) in the presence of: -

1. Ms. Tigoi for the Applicants and

2. The Applicants