



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MERU
SUCCESSION CAUSE NO.45 OF 2010

In the Matter of the Estate of Mbugita Marete Alias Mbugita M'Marete (Deceased)

BERNARD MURITHI..... PETITIONER

-VS-

JOHN MWIRIGI THURANIRA..... OBJECTOR/APPLICANT

RULING

Revocation of grant

[1] By summons dated 7th April 2015, the Objector has applied for revocation of grant made to the petitioner on 29th May 2012. He also applied to be enjoined in the cause in order to defend his interest in this matter. The application is supported by his affidavit sworn on the 7th of April 2015.

[2] Reading the grounds in the application, the Applicant alleges:-

- (i) That the proceedings to obtain the grant were defective in substance;
- (ii) That the grant was obtained fraudulently by making of a false statement or by the concealment from the court of fact material to the case;
- (iii) That the grant was obtained by means of untrue allegation of fact essential in point of law to justify the grant notwithstanding that the allegations were made in ignorance;
- (iv) That the petitioner failed to give the rightful share to the objector i.e. 3 acres of land to which his late father, John Rwanda was entitled to and instead unlawfully retained it as his own;
- (v) That these proceedings were done secretly and without his consent. The whole time the applicant was in darkness.
- (vi) That the administrators forced him to pull down his house.

[3] The petitioner filed a replying affidavit sworn on 22nd May 2012. He deposed that the applicant was fully involved in whole process from inception to the end. To show that the applicant was involved, the petitioner stated that:-

(i) The applicant was involved in the process, he petitioner stated that the applicant signed the chief's letter dated 6th June 2011.

(ii) The applicant and his wife were present on the ground during subdivision of the estate property on 5th October 2012 and never raised any objection;

(iii) That the applicant and his family consented to and were contented with the share allocated to him and have settled on it i.e. ABOTHUGUCHI / GAITI / 3194.

[4] The petitioner made further averments; that the applicant cannot be trusted and that he is merely lying. His aim is to sell the property and has already entered into an agreement for sale with KajujuKaugu. He said that the applicant's claim has been overtaken by events and statute barred as the administration of the estate is now completed and beneficiaries have their own title deed. To him granting his request would be prejudicial to all of them.

DETERMINATION

[5] The question in this case is this; has the applicant satisfied the grounds for revocation of grant as stipulated under section 76 of the Law of Succession Act? Is there evidence that:-

(i) That the proceedings to obtain the grant were defective in substance;

(ii) That the grant was obtained fraudulently by making of a false statement or by the concealment from the court of fact material to the case;

(iii) That the grant was obtained by means of untrue allegation of fact essential in point of law to justify the grant notwithstanding that the allegations were made in ignorance.

[6] I will start with the allegation that these proceedings were done secretly and without his consent. The applicant alleged that he was in darkness the whole time. The petitioner stated that the applicant and his family were aware of and were involved in the whole process. He said that he signed the letter by the chief dated 6th December 2011. He also averred that the applicant were present during the subdivision of the land. I have perused his affidavit in support of this application and he has not denied that he signed the letter from the chief. He did not also deny that he and his family were involved in the subdivision of the land in question. The argument that the petitioner failed to give the rightful share to the objector i.e. 3 acres of land which his late father, John Gikunda was entitled to is not in itself sufficient ground to revoke the grant. The said argument may be a ground of appeal but not revocation of title. Accordingly, I do not think these proceedings were defective in substance; or the grant was obtained fraudulently by making of a false statement or by the concealment from the court of fact material to the case; or the grant was obtained by means of untrue allegation of fact essential in point of law to justify the grant notwithstanding that the allegations were made in ignorance. In the upshot, I dismiss the application dated 7th April 2015. This being a matter involving close family members I order each party to bear own costs of the application, it is so ordered.

Dated, signed and delivered in open court at Meru this 12th July 2017

F. GIKONYO

JUDGE

In the presence of:

Petitioner – present

Objector – present

F. GIKONYO

JUDGE