



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KAKAMEGA

SUCCESSION CAUSE NO.235 OF 2000

IN THE MATTER OF THE ESTATE OF

RICHARD NDUKU LUCHENDODECEASED

BENARD SHIKUKU NDUKUAPPLICANT/OBJECTOR

VERSUS

PROTAS IMBALA RAPANDOADMINISTRATOR/RESPONDENT

R U L I N G

The Application

1. The application for determination is the Notice of Motion dated 28th April 2015 brought pursuant to Section 47 of the Law of Succession Act Cap 160 Laws of Kenya. The applicant/objector seeks for orders:-
 1. That the Honourable Court be pleased to re-open the succession cause herein for hearing and determination.
 2. That the application dated 14th April 2015 for revocation of grant be fixed for hearing and determination.
2. The application is based on the grounds set out on the face of it and supported by the objector/applicants affidavit of the same date wherein he depones that he is a beneficiary of the estate of the deceased herein who was his father. In the affidavit he claims that the succession process was started by the petitioner herein who was a purchaser of a portion of one (1) acre of the estate comprising land parcel number BUTSOTSO/ESUMEYIA/118 and that he took advantage of the illiteracy of their mother and petitioned for letters of administration of the estate.
3. The applicant also claims that the petitioner has misused the certificate of confirmation of grant to obtain more land than what he bought. For the reasons stated above he wants the succession cause herein re-opened so that their objection proceedings can be heard. He further claims that most of the beneficiaries will not get their share of inheritance unless the objection proceedings are heard. He also claims that notice to dismiss and/or close the file was not served upon them and that there may be an outbreak of violence between the petitioner and other beneficiaries who have been disinherited by him. He wants the file re-opened in the interest of justice.
4. The application is opposed by the petitioner vide a replying affidavit dated 12th day of October 2015 wherein he depones that he petitioned for letters of administration together with one AUGUSTINE AKHULUNYA NDUKU the elder brother to the objector who was fully aware of the same. He further depones that even at the date of issuance of grant and subsequent death of

the 1st administrator on 9th September 2000 the objector was fully updated. He adds that an application was filed in Court on 10th February 2011 to amend the grant which application though filed after a period of eleven (11) years was allowed. He further claims that the objector's application is an afterthought and incompetent in law because the objector refused to substitute his late brother as an administrator. He contends that the objector's application is an abuse of the process of this Court intended to delay justice and should be dismissed. He explains that on 13/4/2011 the grant herein was confirmed and L.R. BUTSOTSO/ESUMEYIA/118 distributed as follows:-

- | | | |
|-----------------------------|---|--------|
| a. ELIZABETH NDUKU | - | 010Ha |
| b. CONSOLATA AKHULULNYU | - | 1.00Ha |
| c. GABRIEL NDUKU | - | 0.40Ha |
| d. BENARD NDUKU | - | 0.40Ha |
| e. PROTAS IMBALA RAPANDO | - | 1.00Ha |
| f. GILGORIA CHIBOLE MUSHENI | - | 0.40Ha |
| g. GODFREY LUSHAKA KARAGAVA | - | 0.76Ha |

and that each of the dependants has already acquired titles to his/her portion. He maintains that he has not abused his position as a legal administrator of the estate of the deceased.

Background

5. The deceased in this matter RICHARD NDUKU LUCHENDO died on the 17th August 1980 at Kakamega. Grant of Letters of Administration intestate were issued to AUGUSTINE AKHULUNYA NDUKU and PROTAS IMBALA RAPANDO on the 28/07/2000. By an application dated 10th February 2011 PROTAS IMBALA RAPANDO sought orders to amend the grant of Letters of Administration to delete the name of AUGUSTINE AKHULUNYA NDUKU who died on 9/9/2000. On the 14/2/2011 the above orders were granted and PROTAS the petitioner herein went ahead and applied for confirmation of grant of Letters of administration intestate vide the summons dated 15th February 2011. On the 13/4/2011 the grant was confirmed as prayed and L.R No.Butsotso/Esumeyia/118 distributed amongst the dependants as shown on the Certificate of confirmation of grant.
6. By an application dated 15th November 2011 the petitioner sought to amend the mode of distribution. This application was not canvassed as the parties were absent at the time of the hearing on the 16/3/12. On the 29/3/2012 the application dated 15/11/2011 was fixed for hearing on 3/10/2012 but was stood over generally on this date for non-attendance by the parties.
7. On 9/3/2015 at the registry the file was to be placed before the Hon. Judge on the 19/3/2015 for an order to close the file. On 19/3/2015 the Court ordered that in the absence of the parties the suit be dismissed for want of Prosecution and accordingly the file was closed.
8. This Court notes that the grant in this case was confirmed on the 13/4/2011. This in effect determined in finality the succession of the deceased's estate herein.

Analysis and Findings

9. As far as this Court can discern from the record there is no appeal against the Courts ruling and determination or an order to vary or review the terms and mode of distribution as contained in the ruling issued on the 13/04/2011. For this Court to interrogate and/or fill up any gaps that may be open would be sitting on appeal on its own decisions. This Court is now *functus officio* having pronounced itself on the issue of distribution and confirmation of the grant.
10. As held in the case of **NGUGI –VS- KINYANJUI and 3 OTHERS [1989] @ KLR** in Civil Appeal No.1 of 1986 the learned Judges of Appeal stated:-

“In Law any litigation has to come to an end. Once a decision has been reached by a competent Court, it cannot be re-opened to be re-started all over again unless the decision reached has been set aside. Any decision reached if not set aside, it can only

be challenged on appeal and cannot be challenged in any inferior Court, tribunal or in the same Court except in case of review. The Law will not allow any dispute between the same parties or between those who claim through them to re-open the dispute while the judgment still remains on record.”

11. In the circumstances of this case, and without going deeper into the merits and demerits of the matter this Court finds the objector’s application dated 28/04/2015 unmerited and an abuse of the Court process and the same is dismissed with costs to the respondent/petitioner.

12. Orders accordingly.

Ruling delivered, dated and signed in open Court at Kakamega this 3rd day of February 2016.

RUTH N. SITATI

JUDGE

In the presence of:

Mr. Manyoni (present) for Applicant

Present in Person for Respondent

Mr. Lagat - Court Assistant