

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII

SUCCESSION CAUSE NO. 3 OF 2015

IN THE MATTER OF THE ESTATE OF AUGUSTINO MOYWAYWA NYABARI – DECEASED

RULING

1. On the **4th June 2014**, a petition for letters of administration intestate respecting the estate of the late **Moywaywa Nyabaro**, was filed by his sons, **Lukas Sasati Nyareru** and **Samuel Ombui Kenagwa**, vide **Succession Cause No. 216 of 2014**.

The only asset listed as belonging to the deceased was land **Parcel No. Central Kitutu/Mwamosioma/162**.

The listed beneficiaries were the seven (7) sons of the deceased including the petitioners.

The record shows that nothing worthwhile came out of the petition. In other words, the application was not granted and may never have been granted by this court as the pre-requisite requirements remained inchoate. The matter remains pending to this day and the necessary court file has now been consolidated with the present matter i.e **Succession Cause No. 3 of 2015** which was filed on **7th January 2015**, by **Benard Nyamanya Mogaka** and **Silvester Migori Kenagwe**, in their capacity as the sole dependants of the late **Augustino Moywaywa Nyabaro**. Seems that the late **Augustino Moywaywa Nyabaro** is the same **Moywaywa Nyaboro**, mentioned in the earlier petition.

2. Significantly, the later application was for letters of administration “*ad litem*” limited only for purposes of filing suit with no powers to distribute the estate property. There was no application by the two applicants for a full grant. Nonetheless, the *ad-litem* application dated **15th December 2014**, it would appear, was not entertained by the court and remained pending.

In the meantime, the applicants (**Benard and Sylvester**) came up with the present application dated **3rd March 2015**, which seeks orders for revocation of grant of letters of administration issued in **Succession Cause No. 216 of 2014** dated **11th February 2014** and for grant of letters of administration “*ad-litem*” to the applicants for them to undertake a full succession cause for the administration and distribution of the estate property i.e **Land Parcel No. Kitutu Central/Mwamosioma/162**. Also sought is an order that the transfer of the estate property to the petitioner in **Succession Cause No. 216 of 2014**, i.e **Lucas Sasati Nyareru**, is fraudulent and hinges on criminality.

3. The application is based on the grounds contained in the appropriate summons for revocation of grant dated **3rd March 2015**, which are fortified by the averments in the supporting affidavit also dated **3rd March 2015** and deponed by the first applicant, **Sylvester Migosi Kenagwa**.

The record of the court does not show that the respondent in this matter (i.e **Lucas Sasati Nyareru**) filed any replying affidavit and/or grounds of opposition. This therefore means that the application is not opposed. However, both parties through their respective advocates i.e **Mr. Abobo** and **Mr. Sagwe**, appeared for the hearing of the application and proceeded by way of written submissions.

This court has given due consideration to the application and the submissions for and against and with regard to the first prayer for revocation and annulment of the grant issued in **Succession Cause No. 216 of 2014**, it has already been observed hereinabove that no grant of letters of administration intestate was issued to the applicants therein i.e. **Lukas Sasati Nyareru** and **Samuel Ombui Kenagwa**. Therefore, there is no valid grant for revocation and annulment by this court and if there is a grant dated **11th**

February 2014, issued under the cover of the said **Succession Cause No. 216 of 2014**, then it is invalid and may have been obtained by unlawful means. Otherwise, the finding of this court is that there exists no grant in this matter for an order of revocation and annulment to issue Prayer one of the application is misconceived.

4. With regard to prayer two that the transfer of the estate property to **Lucas Sasati Nyareru** by the Land Registrar be declared fraudulent and criminal, the jurisdiction to make such order lies with the Environment and Land Court or perhaps a criminal court if a suspect is arraigned in such court for any criminal activity revolving around a false grant of letters of administration.

And, with regard to the third prayer, that letters of administration "**ad litem**" be issued to the applicant there is a pending application dated **15th December 2014** in that regard. The said application has never been withdrawn. All that the applicants need to do is to pursue that application or have it withdrawn altogether. In any event, the ad-litem grant would be for purposes of a suit and nothing else. It cannot be issued in the present application.

5. In sum, the entire application is disallowed for the reasons stated hereinabove.

Each party shall bear own costs of the application.

Ordered accordingly.

J.R. Karanja

JUDGE

8/3/2016

[Delivered and signed this 8th day of March 2016.]