

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT EMBU

MISC. SUCCESSION CAUSE NO. 314 OF 2014

FORMERLY NO. 14 OF 1987

**IN THE MATTER OF THE ESTATE OF ZEPHANIA KARITI M'THARA alias SAVANIA
KARETI M'THARA – (DECEASED)**

JUSTIN NDARU ZAPHANIAPETITIONER/RESPONDENT

VERSUS

ELIZABETH KARUMA KARITI.....APPLICANT

RULING

1. This is an application for the revocation or annulment of the grant issued to the petitioner, Justin Njeru Zaphania. According to the applicant, the petitioner who is also the administrator of the estate took out a grant of letters of administration intestate and were confirmed without her being consulted. It is her evidence that the suit land belongs to her late husband and for that reason she should be given permission to subdivide it among the children of the deceased. According to her, the suit land consists of Kyeni/Kigumo/1775 and Kyeni/Kigumo/1776. She produced the green cards for these two parcels of land as exhibit numbers 1 and 2 respectively. She also produced the search certificates in respect of parcel number Kyeni/Kigumo/1775 as exhibit 3.
2. It was also her evidence that a child such as the petitioner in the instant case cannot subdivide and distribute his father's estate. She stressed that the respondent did not notify them that he had filed succession proceedings in respect of this estate.
3. I have perused the Embu magisterial court proceedings in succession cause No 158 of 1986 in issue and I find that this applicant/protestor participated fully from the beginning to the conclusion of those proceedings. She went further and consented to being given one acre in terms of the order of the Resident Magistrate dated 6th July 1988. I therefore do not believe her evidence that she was not consulted.
4. However, I find her evidence credible that she was not consulted when the respondent applied for rectification of the confirmed grant in the above cause which indicated that there were additional properties of the estate which had been excluded. I believe her evidence that she was not consulted in this regard.
5. I have evaluated the entire evidence of the protestor and that of the respondent and his witnesses and I find that the respondent did not notify the protestor in respect of the rectification of the confirmed grant issued to Justin Njeru Zaphania dated 11th February 1998. In the circumstances, I find this was in contravention of the requirements of section 76 of the Succession Act (Cap 60) Laws of Kenya.
6. I therefore find that the protest has succeeded and for that reason the confirmed grant is hereby set aside.
7. There will be no orders to costs because this was a dispute that involves members of the same family.

RULING DATED, SIGNED and DELIVERED in open court at **EMBU** this 7th day of June **2016**

In the presence of both the petitioner/respondent and the protestor/applicant.

Court clerk Njue

J.M. BWONWONGA

JUDGE

07/06/2016