



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KISII
SUCCESSION CAUSE NO. 327 OF 2012

THE ESTATE OF MOKUA MOKORO.....DECEASED

AND

IN THE MATTER OF REVOCATION OF GRANT OF LETTERS OF ADMINISTRATION

BETWEEN

RICHARD ONDERI MOKUA.....PETITIONER

AND

MARY MAROBA OKECHI.....INTERESTED PARTY

RULING

Background

1. **JOHN MOKUA MOKORO** (hereinafter, “the deceased”) died on 25th June 1980. Grant of letters of administration in respect to his estate to comprising of **LR. NO. SOUTH MUGIRANGO BOTABORI SOUTH/734** (hereinafter “the suit land”) was made to his son **RICHARD ONDERI MOKUA**, the Petitioner/respondent herein, on 25th February 2003.

2. On 6th May 2011, the said grant was confirmed by this court, then presided over by Sitati J. whereupon an order was made that the suit land was to be registered in the petitioner’s name to hold it in trust for all other beneficiaries (sons) who were listed as follows:

- a) **Shem Onami Mokua**
- b) **Laban Mauti Mokua**
- c) **Kefa Migiro Mokua**
- d) **Henry Nyabuto Mokua**

Application for revocation of grant

3. This ruling relates to summons for revocation of grant dated 8th July 2014 brought under **Section 76 (b) and (d), 83 (g) of the Law of Succession Act Cap 160 Laws of Kenya** (hereinafter “the Act”) and **Rule 44 of the Probate and Administration Rules**.

4. In the said application, the applicant, who also refers to herself as an interested party seeks the following orders:

1. Spent.

2. That pending hearing and determination of this summons a prohibitory injunction do issue restraining the petitioner/Respondent from disposing off, selling, charging and/or appropriating the assets of the deceased more particularly Land Parcel number South Mugirango/Botabori South/734 in any manner whatsoever and/or howsoever.

3. That the grant of letters of administration made in favour of the Petitioner/Respondent be revoked so as to include the applicant.

4. That the costs of this application be borne by the petitioner.

5. The application is supported by the applicant's affidavit dated 8th July 2014. The applicant deposes that she is one of the beneficiaries of the deceased's estate together with one other beneficiary Joel Okemwa Onenga who discovered that some stranger had tampered with Parcel No. South Mugirango/Botabori South/713 (hereinafter "LR NO. 713") by carving it out of the suit land. She states that through another succession cause No. 327 of 2002, strangers from Boigo Sub-location had inherited her mother in law's land Parcel No. South Mugirango/Botabori South/713 and therefore she prayed that the grant issued to the petitioner be revoked so that LR. NO. SOUTH MUGIRANGO/BOTABORARI SOUTH/713 could revert to the original owner one Biyaki Basweti and that consequently, the suit land also reverts back to the estate of Biyaki Matureti.

6. The applicant attached a copy of a death certificate in respect to one Daniel Amisi Okechi Matureti as annexure "MM01" and the certificate of official search in respect to land parcel No. South Mugirango/Botabori South/713 belonging to Buyaki Matureti as annexure "MM02".

7. The petitioner/respondent did not file any affidavit in response to the application for revocation of grant despite service with the summons and on 13th March 2015, this court, differently constituted, granted temporary orders of prohibition against further dealings on land parcel number South Mugirango/Botabori South/734 pending the hearing of the instant application.

8. When matter came up for hearing before me on 11th February 2016, the applicant informed the court that she will canvass her application by way of written submissions. The applicant subsequently filed her written submission on 27th April, 2016 while the respondent did not file any written submissions despite service with hearing and mention notices.

Applicant's written submissions

9. In her written submission filed through her advocates M/s S. M. Sagwe & Co. Advocates, the applicant states that the suit land originally belonged to one Buyaki Mutareti who died in 1984 and that the respondent failed to include the applicant as a beneficiary in the succession cause in view of the fact that the objector/applicant had refunded cows to the respondent.

10. The applicant further contends that the respondent/petitioner obtained the grant fraudulently by failing to give the court the true position. The applicant concedes that there is no relationship between the deceased herein and the said Buyaki Matureti.

Analysis and determination

11. I have considered the pleadings in this case together with the applicant's written submissions.

12. This application seeks the revocation of grant issued to the respondent on 25th February 2003 on the

grounds that the applicant, who is also a beneficiary of the deceased's estate was omitted from the said succession proceedings.

13. **Section 76 (b) and (d)** of the “Act”, under which the instant application has been brought stipulates as follows:

“76. Revocation or annulment of grant

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

(b) that the grant was obtained fraudulently by the making of a false statement or by the concealment from the court of something material to the case;

(d) that the person to whom the grant was made has failed, after due notice and without reasonable cause either—

(i) to apply for confirmation of the grant within one year from the date thereof, or such longer period as the court order or allow; or

(ii) to proceed diligently with the administration of the estate; or

(iii) to produce to the court, within the time prescribed, any such inventory or account of administration as is required by the provisions of paragraphs (e) and (g) of section 83 or has produced any such inventory or account which is false in any material particular; or

14. I note that in the instant case, the applicant has not clearly established or stated the relationship between her and the deceased, Mokuia Moko, so as to entitle her to be a beneficiary of his estate. The applicant, in her affidavit in support of the application seems to suggest that the suit land belonged to one Biyaki Basweti and that the said suit land was at one time part and parcel of LR. NO. SOUTH MUGIRANGO/BOTABORI SOUTH/713 and therefore the suit land should revert back LR 713.

15. I find the applicant's contention that the two land parcels belonged to Biyaki Basweti to be far-fetched as the same was not proved by any documentary evidence whatsoever. The applicant's annexure “MMO1”, a certificate of official search in respect to LR. NO. 713 clearly shows that the said land parcel belongs to Buyaki Matureti as the original owner as at 5th June 1971 while the certificate of official search in respect to the suit land shows that it belonged to the deceased as at 5th June 1971. Clearly, the two parcels of land belonged to different persons as at the time of the first registration of titles and therefore, I find that there is no basis for the applicant's prayer and contention that the suit land should revert back to LR. NO. 713.

16. It is clear to me that Biyaki Matureti and the deceased herein are two distinct land owners and therefore, there is no way the two parcels of land can be merged through a revocation of grant issued to the petitioner.

17. Having found that the applicant has not established the relationship between her and the deceased herein and having found that there is absolutely no nexus between the suit land and LR. NO. 713, the order that commends itself to me is the order to dismiss the application dated 8th July 2014 with no orders as to costs.

Dated, signed and delivered in open court this 5th day of December, 2016

HON. W. A OKWANY

JUDGE

In the presence of:

- Objector in person for the Objector
- Osoro for Sagwe for the Applicant
- Omwoyo: court clerk