



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

SUCCESSION CAUSE NO. 359 OF 2008

IN THE MATTER OF THE ESTATE OF JOHN MUTHUSI KATHENGE

DAVID MUNYAO WAMBUA PETITIONER/RESPONDENT

VERSUS

1. ELIZABETH NDULU MUTHUSI
2. TOM MUTHUSI
3. MARGARET VEKE MUSEMBI OBJECTORS/APPLICANTS

RULING

1. The application (amended) dated 3/8/2012 seeks orders that the grant issued to David Munyao Wambua be annulled/revoked. It also seeks an order prohibiting any transactions that may be commenced by use of the grant herein and/or disposal of any of the properties to the estate.

2. It is stated in the affidavit in support that the citation was not served upon the citees. That the grant was obtained by concealment of material facts and that the interests of the Applicants were not taken care of. That beneficiaries who ought to have been cited were omitted. The Applicant accused the Respondent of fraud and misrepresentation. According to the Applicants, the Respondent purchased the suit property from some of the beneficiaries and not from the deceased.

3. The application is opposed. It is averred that the citation was served on the Applicants. According to the Respondent, he is the one who is in occupation of the suit property. That each of the beneficiaries, have their own portions of the suit property and nobody else has complained except the Applicant. It is further stated that the due process of the law was followed when the Respondent petitioned the court for the grant. It is further contended that the application is premature as the grant is yet to be confirmed.

4. The application was canvassed by way of written submissions which I have duly considered.

5. The citation dated 23/6/2008 clearly states that the Respondent purchased the suit property from the family members of the deceased. The sale violated **section 45 (1)** of the **Law of Succession Act Cap 160 Laws of Kenya** which provides as follows:-

“Except so far as expressly authorized by this Act, or by any other written law, or by a grant of representation under this Act, no person shall, for any purpose, take possession or dispose of, or otherwise intermeddle with, any free property of a deceased person.”

6. The grant herein was issued following a citation instituted by the Respondent against the following persons:-

- i. **Elizabeth Ndulu Muthusi**
- ii. **Tom Muthusi**
- iii. **Margaret Veke Musembi**

It is noted that the application lists twenty persons who are beneficially entitled to the estate of the deceased. This affidavit evidence remains uncontroverted. None of the said beneficiaries had renounced their rights.

7. **Rule 22 (1) of the Probate and Administration Rules** provides as follows:-

“A citation may be issued at the instance of any person who would himself be entitled to a grant in the event of the person cited renouncing his right thereto.”

8. The Respondent was not a person entitled to the grant as he was not a creditor in the estate of the deceased. It is clear from the affidavit in verification of the citation that the Respondent purchased the suit property from the three citees and not from the deceased. The purchase amounted to intermeddling with the estate of the deceased.

9. For the aforestated reasons, I find that the application has merits. I allow the application with costs.

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B. THURANIRA JADEN

JUDGE

Dated and delivered at Machakos this 11th day of March 2015.

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JUDGE