



**REPUBLIC OF KENYA.**

**IN THE HIGH COURT OF KENYA AT KITALE.**

**SUCCESSION CAUSE NO. 195 OF 2004.**

**JAMES WANYAMA MASOLO ::::::::::::::::::::::::::::::::::::::: DECEASED.**

**AND**

**FREDRICK WAKHUNGU WANYAMA )**

**STEPHEN WAFULA WANYAMA ) ::::::::::::::::::::::::::::::: APPLICANTS.**

**R U L I N G.**

1. The application dated 14th February, 2014 is essentially for the removal of the respondent from the administration of the estate of the deceased and in the alternative for the revocation of the grant issued on 18th January, 2005 and confirmed on 6th October, 2005. It is based on the grounds specified in the appropriate summons as supported by the supporting affidavit of the first applicant dated 14th February, 2014 and 18th February, 2015.

The respondent opposes the application on the basis of the averments in his replying affidavit dated 16th June, 2014. there is also a supplementary affidavit deponed by some beneficiaries of the estate dated 16th June, 2014 who appear to support the respondent against this application.

2. After considering and hearing the application inter-parties, it is apparent to this court that in as much as the alternative prayer is concerned, the application is clearly an abuse of the court process as a similar application had previously been made by the first applicant and others a ruling rendered on 22nd November, 2012 by this court declining to revoke and/or annul the grant. In the ruling, the court observed this:-

***“Even though the mismanagement of the share***

***belonging to Rose would be sufficient reason to***

***revoke and/or annul the grant, it would not be in***

***the interest of the entire estate to do so as this would***

***complicate the entire administration process and***

***probably give rise to a multiplicity of suits by third***

***parties who may have purchased part of the estate***

***property.”***

The court then went ahead to co-opt the present two applicants into the administration of the estate along with the respondent. They cannot now turn around and seek a fresh revocation of the grant in

which they are administrators unless they are best at abusing the court process.

For those reasons, the alternative prayer is a misconception and is overruled.

3. With regard to the main prayer that the respondent be removed from the administration of the estate, the major complaint by the applicants is that ever since their enjoinder as co-administrators of the estate, the respondent has displayed a “lone ranger” attitude and refused to co-operate with them in any manner towards proper and satisfactory administration of the estate thereby leading to mismanagement and wastage of the estate.

The respondent has however, denied the allegation and states that the applicants were appointed as administrators after distribution of the estate to the beneficiaries had been undertaken. He further states that he filed an inventory in court as ordered on 16th February, 2013. The respondent contends that there is nothing more to be distributed and accuses the applicants of malice in bringing this application.

4. The beneficiaries who deponed the supplementary affidavit dated 16th June, 2014 seem to agree with the respondent. They state that the only beneficiary yet to receive her share is a minor called Dolphine Nangila Wanyama. Indeed, the applicants in their further or supplementary affidavit dated 18th February, 2015, admit that the estate has already been distributed but they indicate that there are outstanding issues which need to be settled including settlement of beneficiaries at the right places at the Mbai Farm and land portion Kitale Municipality/Kaura Wa Bichau Block 16/11 and the accompanying paper works.

Such issues are in the court's opinion residual issues which cannot affect the substance of the distribution process already undertaken. Besides, any beneficiary having issues with placement in their respective portions or with paperwork would be at liberty to raise any concerns in forums independent of the courts.

5. It follows therefore that the applicants have failed to show good or valid cause to prevail upon this court to remove the respondent from the administration of the estate especially after having filed an inventory within the prescribed period as ordered by the court in its ruling of 22nd November, 2012.

The issue taken by the applicants with regard to the inventory were irrelevant for the purposes of the present application which must in any event, fail for all the reasons stated hereinabove.

None of the prayers sought against the respondent can be granted. Consequently, the application is hereby dismissed with orders that each party bear their own costs.

**[Read and signed this 3rd day of March, 2015.]**

**J.R. KARANJA.**

**JUDGE.**