



REPUBLIC OF KENYA

IN THE HIGH COURT

AT MIGORI

SUCCESSION CAUSE NO. 150 OF 2015

(Formerly Kehancha SRM Succession Cause No. 26 of 2013)

IN THE MATTER OF THE ESTATE OF

PAUL MACHEGERA SAGAMO (Deceased)

BETWEEN

ISAAC MACHEGERA SAGAMO.....1ST APPLICANT

DANIEL NYAMBUGAI MACHEGERA.....2ND APPLICANT

JOSEPH PAUL MACHEGERA.....3RD APPLICANT

SIMON GATI MACHEGERA.....4TH APPLICANT

JOMO MACHEGERA.....5TH APPLICANT

AND

MOSENDA SAGANO MACHEGERA.....1ST RESPONDENT

CHACHA SAGAMO MACHEGERA.....2ND RESPONDENT

RULING

1. This matter concerns the estate of **Paul Machegera Sagamo (deceased)**, who died on 8th May 2013. The grant of letters of administration intestate for the estate was issued on 4th October 2013 to the respondents in *Kehancha SRM Succession Cause No. 26 of 2013*. I confirmed the grant on 17th April 2015.

2. According to the application for confirmation, the deceased's estate comprised land parcel **BUKIRA/BWISABOKA/224** which now became vested in the following beneficiaries; Patrick Gati Sagamo, Kennedy Boke Sagamo, Chacha Sagamo Geoffrey, Samson Mwita Sagamo, Paul Mali Sagamo, Ghati Sangai Charles, Ghati Sagamo Charles, Daniel Muronge Sagamo, Mosenda Sagamo Machegera and Matiko Mathew Matiko.

3. The applicants filed a summons for revocation dated 8th March 2015, seeking revocation of the grant, *inter alia*, on the grounds that the respondents had obtained the grant fraudulently by making a false statement of fact and concealing material facts to the court, that the grant was obtained by means of untrue allegations of fact, that the grant was made without the consent of all the beneficiaries and that the grant was intended to deny the applicants their property rights.

4. I have considered the summons before me and I am satisfied that this court has jurisdiction to revoke or annul the grant as is clearly set out in **section 76** of the ***Law of Succession Act (Chapter 160 of the Laws of Kenya)***.

5. I have considered the depositions in support of the application and those in opposition and I find that it is not disputed that the deceased had three parcels of land namely; **BUKIRA/BWISABOKA/700**, **BUKIRA/BWISABOKA/224** and **BUKIRA/BWISABOKA/696**. The applicants' contention is that the three parcels of land had been subdivided by the deceased prior to his death and that all the beneficiaries had settled on their respective parcels which fact the respondent's did not disclose. The respondents on their part do not deny that the deceased had already distributed his land to the beneficiaries but that the applicants have sold their inheritance hence they are laying claim to **BUKIRA/BWISABOKA/224** which the deceased had given to the beneficiaries set out in the confirmed grant.

6. I find and hold that the deceased left three properties which were part of the estate and the same ought to have been disclosed together with all the beneficiaries. The failure to do so constitutes non-disclosure of material facts. Whether the deceased had distributed the properties in his life time is a matter that the court is entitled to under **section 42** of the ***Law of Succession Act*** when distributing the estate. This fact does not relieve the petitioners of the duty to make full disclosure of the beneficiaries who had given *inter-vivos* gifts or the assets that had been distributed. It is on this ground that I set aside the confirmed grant to enable the court consider the mode of distribution afresh.

7. For the reasons I have given and in order to obviate further proceedings I now make the following orders;

a. I revoke the Certificate of confirmation of grant issued to Mosenda Sagamo Machegeera and Chacha Sagamo Machegeera on 17th April 2015;

b. The administrators shall file and serve upon the respondents a fresh application for confirmation of grant incorporating the deceased properties known as **BUKIRA/BWISABOKA/700**, **BUKIRA/BWISABOKA/224** and **BUKIRA/BWISABOKA/696** within **fourteen (14) days** hereof.

c. The applicant herein shall file and serve affidavits of protest within fourteen (14) days from the date of service.

d. Thereafter the matter shall be fixed for directions before the judge.

e. There shall be no order as to costs.

DATED and DELIVERED at MIGORI this 3rd day of September 2015.

D.S. MAJANJA

JUDGE

Mr Odingo instructed by Odingo & Company Advocates for the applicants.

Mr Odero instructed by Agure Odero and Company Advocates for the petitioners/respondents.