



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT EMBU
SUCCESSION CAUSE NO. 134 OF 2011

In the matter of the Estate of JACOB M'MIRU (Deceased)

ELIZABETH MUTITU JACOB..... 1ST APPLICANT/ADMINISTRATOR
CHARLES MWANIKI JACOB.....2ND APPLICANT
MARGARET WANJIRA JACOB.....3RD APPLICANT
JANE MUTHONI JACOB.....4TH APPLICANT

VERSUS

GICHOVI JACOB MUNDUWAMERU..... 1ST RESPONDENT
BENSON NJAGI JACOB.....2ND RESPONDENT
ROBERT NYAGA JACOB.....3RD RESPONDENT

RULING

This is a ruling on an application dated 5/1/2015 brought under Section 3 and 3A of the Civil Procedure Act seeking for the following prayers:-

- 1. That the honourable court be pleased to order to for removal of the cautions/restrictions lodged against land parcel No. Ngandori/Kirigi/17.*
- 2. That the names appearing in the said land register be cancelled and be reverted to the administrator (Elizabeth Mutitu Jacob) to carry out the sub-division as per the confirmed grant issued on 19th December 2014.*
- 3. That the costs of this application be at cause.*

The 1st applicant depones in the supporting affidavit that she is the widow of the deceased Jacob M'Miru and the administrator of his estate. The grant was confirmed on 27/11/2014. The 2nd, 3rd and 4th applicants are her children and that she registered the land Ngandori/Kirigi/17 in their names after the death of the deceased for purposes of securing it. At that time the three children were of tender age. She depones that they are beneficiaries of the estate of the deceased and that she wants the land to revert to her so that she can be able to sub-divide it among all the beneficiaries.

In the replying affidavit of the 1st respondent Jacob Gichovi, he states that he has the authority of the other respondents to swear the affidavit. He states that they have filed summons for revocation of grant dated 29/12/2014. The grounds supporting the summons is that the applicant lied to the court that the deceased was the owner of LR. Ngandori/Kirigi/17. The land is registered in the names of the five sons of the deceased including the deponent. He urges the court to dismiss the application to allow the summons for revocation of grant to be heard.

The applicant in her further affidavit depones that her husband died in 1961 and he was survived by 8 children. After the death of her husband she registered the respondents as proprietors of the land without their knowledge for they were under age. It was in the year 2005 that the respondents learnt that they were the registered proprietors of the land. The respondents have attempted to transfer the land to other people but her younger son and daughters placed the restriction on the land. The respondents did not object to the mode of distribution which was included in the grant. All the beneficiaries are her biological children and are entitled to equal shares.

The court record shows that the respondents filed an application dated 29/12/2014 seeking for revocation of the grant issued to the 1st applicant on 19/12/2014. The grounds in support of the summons are that the 1st applicant failed to inform the court that one of the beneficiaries Kariuki Jacob and the 4th applicant herein was deceased at the time the grant was confirmed.

In view of the fact that there is a pending application for revocation of grant, it is important that the said application be disposed of before the orders in this application are considered. It has also been revealed in this application that the 1st applicant failed to disclose some material facts to the court when the grant was being confirmed. There is a host of issues that must be sorted out through the summons of revocation or by other informal means within the family before any further steps can be taken.

I find that this application lacks merit and it is hereby dismissed.

It is hereby so ordered.

DELIVERED, DATED AND SIGNED AT EMBU THIS 7TH DAY OF OCTOBER, 2015.

F. MUCHEMI

J U D G E

In the presence of:-

Petitioners

Protesters