

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

SUCCESSION CAUSE NO. 304 OF 2013

IN THE MATTER OF THE ESTATE OF LATE MULI MATHOKA NGULI (DECEASED)

JUSTUS MULI MATHOKA.....APPLICANT

VERSUS

NGOKI MULI.....RESPONDENT

RULING

1. The application dated 13th May, 2013 seeks orders that the grant confirmed on 13th September, 2011 by the Kitui SRMC Succession Cause No. 145 of 2010 be revoked.
2. It is contended in the affidavit in support that the grant was issued to a person without capacity. That there are errors in the Provincial Land Dispute Appeals Committee award which the court relied on. That some properties belonging to the deceased being LR Mutonguni/Nzala/158 and 159 were concealed from the court. That the consent for the confirmation of the grant was obtained fraudulently as the Applicant did not understand the same.
3. The application is opposed. According to the replying affidavit, both the Applicant and the Respondent are beneficially entitled to the estate of their father the deceased. That the Applicant was given two other parcels of land by their late father and that the Applicant occupies the said two parcels of land in exclusion of other family members.
4. That a dispute arose over the sharing of their late father's homestead where the Respondent is settled. That the dispute was settled by the Land Disputes Tribunal and by the Land Disputes Appeals Committee. That the Respondent petitioned the court for a grant of letters of administration with the consent of the Applicant. The Respondent denied the allegations of fraud and stated that the correct value of the land was given to the court and that all the properties of the deceased had been reflected therein.
5. The application was heard by way of written submissions which I have duly considered.
6. The Applicant has not denied that he gave his consent when the grant was confirmed. Although the Applicant has stated in the grounds that he did not understand what was happening when the grant was confirmed, his affidavit evidence fails to substantiate why or what he did not understand.
7. As a surviving child of the deceased, the Respondent had the capacity to petition the court for the grant. No evidence has been brought before this court in support of the assertion that some properties left behind by the deceased were concealed from the court. The Applicant has also failed to produce any valuation report in support of his contention that the value of the estate of the deceased was beyond the jurisdiction of the lower court. The issues raised concerning the decision by the Land Dispute Tribunal cannot be addressed through this Succession Cause but through an appropriate forum.
8. With the foregoing, I find no merits in the application and dismiss the same with costs.

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B. THURANIRA JADEN

Dated and delivered at Kitui this 15th day of October, 2015

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B. THURANIRA JADEN

JUDGE