REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

SUCCESSION CAUSE NO. 882 OF 2012

IN THE MATTER OF THE ESTATE OF REMKUWI ONGOMA alias RENIKUWI ONGOMA MBUNDU - (DECEASED)

BETWEEN

EMMANUEL WANZABASI MUSIA ..... PETITIONER/RESPONDENT

VERSUS

DAVID JAKONGO MURUNGA …..... OBJECTOR/APPLICANT

R U L I N G

Before me is a summons dated 30th July 2013 filed by the objector under Section 76 of the Law of Succession Act (Cap. 160) and Rules 43, 49 and 73 of the Probate and Administration Rules.

The prayers in the application are –

1. That the letters of administration intestate issued to the petitioner, certificate of confirmation of the grant and the grant be revoked and annulled.
2. That a fresh letter of administration be issued to the objector.
3. That pending hearing and determination of this application, the petitioner, his servants, agents and/or assigns or persons acting through him be restrained from interfering in any manner with the peaceful occupation and use of land parcel No. E/Wanga/Eluche/667.
4. That cost of this application be in the cause.

The application has grounds on the face of the Notice of Motion. It was filed with a supporting affidavit sworn by the objector on 30/7/2013. It was deponed, inter-***alia,*** that the objector was the direct beneficiary of the estate of the deceased herein. That the petitioner herein had secretly done a succession of the estate of VICTORIA WAMBUTSI (not the deceased herein) and used the same to acquire land parcel No. E/Wanga/Eluche/335. That the petitioner failed to disclose material facts that the objector had an interest in this estate. That the objector had already filed Kakamega High Court Succession Cause No. 903 of 2012 regarding this same estate. That the petitioner and a buyer had started threatening the objector on the subject land herein.

At the hearing of the application, both the administrator and objector addressed the court.

I have considered the documents filed and the submissions made in court by the parties. Both sides have provided the court with scanty facts. None has stated the relationship between them and the deceased.

The administrator has merely stated that the objector is a son of his elder brother, without saying what relationship that elder brother has with the deceased. The objector, on the other hand, has stated that he has filed another Succession Cause No. 903 of 2012 regarding this same estate but has not either annexed a copy of any relevant document or asked for that subject succession file to be brought to this court.

Though the objector thinks that confirmation of grant herein has been issued, it is clear from the record that only letters of administration were granted by the court on 30th January 2013. No confirmation of grant has been ordered by the court.

Having reviewed the facts and evidence disclosed to me, it appears that both parties are in a mutual hiding game. They are not candid on their respective relationship with the deceased, and what superior interest each has over the other to justify their appointment as administrators. Obviously Succession Cause No. 903/12 was filed later than this one, going by its file number. I have not been informed that letters of administration have been issued therein. I will therefore not revoke or annul the letters of administration granted herein.

I however do not think that dismissing this application will serve the best interests of the parties and the estate. In the interests of justice, I will order as follows –

1. This file be mentioned together with Succession Cause No. 903/12 on 5th June 2014 for directions on who will be the administrator or administrators relating to both files regarding this estate.
2. Since the letters of administration herein have not been confirmed, the administrator herein cannot purport to sell or dispose of the subject land herein, unless authorised by the court.
3. On the mention date above, both parties herein will have to attend court and disclose their relationship with the deceased herein, and whether there are other survivors/beneficiaries alive.
4. Costs in the cause.

Dated and delivered at Kakamega this 8th day of May, 2014

George Dulu

J U D G E