



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERUGOYA

SUCCESSION CAUSE NO. 151 OF 2014

IN THE MATTER OF THE ESTATE OF PETERSON GICHOHI HIUHU (DECEASED)

LEAH WAMBUI GICHOGI

LEAH WANYARA GICHOHI.....PETITIONERS/RESPONDENTS

AND

MAINA JOHANA MIANO alias

JOSEPH MAINA MIANO.....APPLICANT /INTERESTED PARTY

RULING

MAINA JOHANA MIANO alias JOSEPH MAINA MIANO, the applicant herein has moved this court through an application dated 2nd July 2014 asking for the following orders.

1. That the entire succession cause filed herein in respect of the estate of the deceased comprised on L.R. NO. MWERUA/MUKURE/235 be struck out with costs for being an abuse of court process.
2. That the Honourable court be pleased to order the Directorate of Criminal prosecutions to investigate the circumstances under this cause was filed and order possible prosecution of the petitioners and beneficiaries of the deceased for offences of perjury and criminal contempt upon completion of investigations.
3. That the Honourable court be pleased to make further orders as necessary to meet ends of justice.

The application is based on the grounds listed on the face of the application which are as follows;

1. The affidavit of the applicant/interested party.
2. That issues pertaining to the estate of the deceased herein were subject of determination vide High court of Kenya at Nyeri Succession Cause NO. 130 of 2000 where the respondents were petitioners and Grant of letters of Administration intestate were duly issued to them on 31st August, 2000.
3. That the Grant of letters of Administration granted on 31st August 2000 were duly confirmed on 16th March 2001 and entire estate of the deceased duly distributed amongst the beneficiaries including land parcel NO. MWERUA/MUKURE/235.
4. That the applicant/interested party did on 25th June 2001 apply for revocation or annulment of grant issued on 16th march, 2001 in respect to part of the estate comprised of L.R. MWERUA/MUKURE/235 claiming the said land did not form part of the estate of the deceased and the application was allowed.
5. That the ruling of 24th January, 2010 had the effect of reverting L.R. NO.

- MWERUA/MUKURE/230 back to the deceased pending the determination of the intended protest by the interested party to determine how the property would eventually be shared out
6. That the petitioners have filed fresh proceedings secretly without disclosing the existence of Nyeri High court Succession Cause NO. 130 of 2000 that is dealing with a similar matter.
 7. That the proceedings are an abuse of court process as there cannot be several succession proceedings in respect to the same deceased person in different court of competent jurisdiction.

The respondents who are petitioners in this cause have opposed the application countering that the application itself is an abuse of court process. The respondents have filed grounds of objection and replying affidavit sworn by Leah Wanyara Gichohi one of the respondent herein on 13th November 2014 to further oppose the application.

I have looked at the grounds and the replying affidavits plus all the annexures therein. I have also looked at the affidavit of Joseph Miano the interested party/applicant sworn on 2nd July 2014, what is clearly emerging from the documents filed is the existence of a similar Succession Cause NO. 130 of 2000 pending in the High court of Kenya at Nyeri.

This court notes that the Succession Cause in Nyeri High Court was instituted by the same petitioners LEAH WAMBUI GICHOHI AND LEAH WANYARA GICHOHI who presented the petition for a grant of letters of Administration on the estate of PETERSON GICHOHI HIUHU the deceased and petitioned for Letters of Administration as the widows of the deceased. I have looked at the exhibit marked JMM6 annexed to the affidavit of JOSEPH MAINA MIANO sworn on 2nd July 2014 and it shows that a grant was indeed issued to the petitioners to administer the estate of PETERSON GICHOHI HIUHU and distribute it as per the certificate of confirmation dated 16th March, 2000.

It does appear that the administration of the estate was jolted by the interested party who is now the applicant herein when successfully applied for revocation of the said grant by summons taken out dated 25th June 2001. This court has seen the ruling of the High Court in Nyeri annexed as JMM7 in the affidavit of the interested party and from the ruling it is obvious that the Honourable Judge made a ruling annulling the grant partly and revoking the distribution of land parcel number

MWERUA/MUKURE/235.

The petitioners herein have admitted in paragraph 8 (a) of the affidavit in reply that they actually took out letters of Administration in the said cause in Nyeri High Court and that in view of the ruling of Honourable Justice Sergon they have sought to have the same reviewed and have listed grounds for review under paragraph 13 of her affidavit. The respondents grounds however appear to be grounds of appeal from the manner in which they are framed. It unclear therefore whether the said review refers to the appeal that the applicant has exhibited as annexure "JMM12" and which the applicant maintains is pending in the court of appeal. At the hearing of this application the respondents alluded that they have abandoned the appeal but nothing was tendered to demonstrate the same. It is assumed therefore unless the contrary is demonstrated that the same is still pending in the court of appeal at Nyeri where it was lodged.

This court finds that the application filed has raised serious questions on the conduct of the applicants herein. The reason for this is observed from the ruling of Honourable Justice Sergon who found the petitioners to have deliberately concealed crucial information from court including a valid court judgment in respect to land parcel number

MWERUA/MUKURE/235. The judgment still stands. The High court in Nyeri revoked the grant in view of concealment of this material fact. Now the same petitioners well aware of the pendency of the said succession proceedings and the ruling of the court have again come to this court in an attempt to get a fresh grant over the same estate of the same deceased person in total disregard of above ruling.

This practice is akin to forum shopping and should be discouraged as the same is an abuse of court process. This court finds that though the prayers (1 & 2) sought in the application may not be available to the applicant, this court nonetheless finds that the application has raised sufficient grounds to revoke the grant issued in this cause in accordance to the provisions of **Section 76** of the **Law of Succession Act (cap 160)**. This court notes that the court in Nyeri is properly seized of the matter pending in court and where any party is dissatisfied with any ruling or finding of the said court, like the case here, the remedy is not to go looking for another court with concurrent jurisdiction but to appeal to an appellate court. The petitioners have deponed that they have filed for a review and whether the same is a review or appeal that is the way to go but coming to this court for a fresh grant is improper and an abuse of court process. If there is a review pending the High court in Nyeri will deal with the same and similarly if there is an appeal then the appellate court will deal with it.

In view of the above this court is satisfied that enough material has been placed before court to invoke its power under **Rule 73 of Probate and Administration Rules** to prevent an abuse of court processes by parties who appear determined to disregard not only a previous court judgment and a ruling but lawful procedure and process. The grant issued on 17th October 2014 to petitioners herein was issued on account of material concealment and a mistake by petitioners. The same is nullified and/or revoked. The petitioners/respondents herein are condemned to pay costs to the applicant. The parties herein being the same parties in Nyeri succession cause No. 130/2000 should proceed with the cause in Nyeri to its logical conclusion and determination.

R.K.LIMO

JUDGE

DATED, SIGNED AND DELIVERED AT KERUGOYA THIS 3RD DAY OF DECEMBER, 2014 in
the presence of

Applicant /interested party

The petitioners/respondents

Mbogo Court Clerk