



REPUBLIC OF KENYA

High Court at Embu

Succession Cause 208 of 2010

In the matter of the Estate of IRERI KAGANE (DECEASED)

AND

IN THE MATTER OF RUNYENJES PM'S SUCCESSION CAUSE NO.101 OF 1976

AND

IN THE MATTER OF ANNULMENT AND REVOCATION OF GRANT

AND

VERACIA WERIA IRERI.....PETITIONER

VERSUS

NJERU IRERI.....1ST RESPONDENT

DAVID NGONDI IRERI.....2ND RESPONDENT

JOHN NDWIGA.....3RD RESPONDENT

DAUGLOUS MUGAMBI MBAKA.....4TH RESPONDENT

LUCY NJOKI NJOKA.....5TH RESPONDENT

R U L I N G

This is the summons for revocation/annulment brought under Section 76 of Law of Succession Act and Rule 44 of Probate and Administration Rules.

Its based on the ground that the learned trial Magistrate had no jurisdiction to deal with the matter as the value of the estate which comprises of 16 acres exceeds the jurisdiction of the trial Court.

The application is supported by the applicant's affidavit. The Respondents filed a replying affidavit in which they oppose the application and want the Court to confirm the distribution. They also confirm that Dauglous Mugambi is a son to their late brother who is entitled to an equal share with the other sons of the deceased.

Both counsels have filed written submissions which I have had an opportunity to read them. I have also read the Ruling by Justice Karanja in ***Embu H.C. Misc. No. 90/2006 – Nancy Wangu Murage & Others Vs James Karimi Murage*** on the issue of jurisdiction.

This matter has a long history which I would wish to relive herein. Before Runyenjes Court was a Succession Cause No. 101/1976. On 8/12/1976 before Mr. Gichango J.K. (District Magistrate) with 3 clan elders and 2 brothers of the deceased, a consent judgment was entered whereby the estate of the deceased was shared out among the deceased's widow and sons and one John Ndwiga.

On 11/12/2009 the applicant herein filed an application for rectification of grant for 2 reasons:

1. ***Her names and those of David Ngondi were not correctly written.***
2. ***And Boniface Mbaka was now deceased and he had no wife or children.***
3. ***That the Grant did not show if the acreage was in hectares or acres.***

She went ahead to redistribute the estate.

The learned trial Magistrate granted the orders sought in this application vide an order dated 21/12/2009 after hearing the applicant alone. Then on 2/3/2010 one Dauglous Mugambi filed an application seeking to have the orders of 21/12/2009 reviewed.

This application was heard inter partes and the learned trial Magistrate allowed the application and set aside his order of 21/12/2009 based on the fact that the Applicant herein had told the court concerning the status of her deceased son Boniface Mbaka. After making the said orders an amended certificate of confirmed grant was issued to the Applicant.

It is true that the learned trial Magistrate lacked jurisdiction to deal with the estate herein as its value exceeded Shs.100,000/= as provided for under Section 489 of the Law of Succession Act.

The learned trial Magistrate only handled the applications for rectification and revision. The orders he made on 17/12/2009 and on 15/4/2010 are therefore set aside for want of jurisdiction. This to me does not amount to revocation and annulment of the grant. The grant had already been confirmed on 8/12/76. The property had already been distributed to the deceased's widow and sons. There is no issue about the court that dealt with the distribution on 8/12/76.

And having read through all the material, affidavits in this file, it is clear that the Applicant herein wanted to disinherit her own son the late Bonface Mbaka who has dependants. The Respondents herein recognize these dependants. They are entitled to inherit the share of Bonface Mbaka just like her other sons have their shares. They will not get a lesser share. Let the Applicant be satisfied with her share.

This is an old matter which should not be still being litigated on. Litigation must come to an end. On record is a letter dated 11/6/1993 and is from the Land Control board granting the applicant consent to subdivide the land as per the Judgment of 8/12/1976.

It clearly shows that the land KYENI/KIGUMO/395 shall be subdivided into 5 portions comprising of one portion measuring four (4) acres while four portions will measure three (3) acres each. The share of Bonface Mbaka (now deceased) will go to his son Dauglous Mugambi Mbaka and his mother Lucy Njoki Njoka (in their own names).

I therefore confirm the grant in terms of that judgment i.e.

1. ***The Applicant is confirmed as the administrator.***
2. ***The estate comprised of KYENI/KIGUMO/395 shall be shared out as follows:-***
 - (a) ***Veracia Weria Ileri - 4 acres***

(b) Njeru Ileri - 3 acres

(c) David Ngondi Ileri - 3 acres

(d) John Ndwiga - 3 acres

(e) Dauglous Mugambi - 3 acres

and his mother in trust for the children of Bonface Mbaka (Being share of Bonface Mbaka).

The Applicant should distribute and transfer the property to the beneficiaries. If she does not do so within 90 days the Deputy Registrar of this Court to sign all necessary papers/forms to facilitate the transfers.

Each party to bear his/her own costs.
Rights of appeal explained.

DELIVERED, DATED AND SIGNED AT EMBU THIS 11TH DAY OF OCTOBER 2012.

**H.I. ONG'UDI
J U D G E**

**In the presence of:-
Petitioner
Respondents
Njue CC**