



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

FAMILY DIVISION

SUCCESSION CAUSE NO. 1341 OF 2014

IN THE MATTER OF THE ESTATE OF KANYOIKE KIBOO (DECEASED)

JOHN KIBOO.....OBJECTOR/APPLICANT

VERSUS

PETER KIRURI MUMBWARESPONDENT

JUDGMENT

1. There is no dispute that the deceased Kanyoike Kiboo died intestate on 15th August 2011. While alive in 1963 he sold his land parcel T.94 Kiamwangi/Kiganjo to the father of the respondent Peter Kiruri Mumbwa. Before he could transfer the land he resold it to a third party. This led the respondent to sue the deceased in PMCC No. 20 of 1990 at Kiambu. The court found that, now that the land had been resold, the deceased refunds the purchase price with interest, also pays for the house that had been destroyed, and also pays costs and interest. By the time the deceased died, he had not paid this money. This caused the respondent to file a citation against the widow of the deceased called Veronicah Wanjiru asking her to accept or refuse to apply for letters of administration of the deceased. When she did not petition, the respondent petitioned and on 22nd September 2015 was issued with the grant of letters of administration intestate. The deceased's widow subsequently died. The respondent applied to have the grant confirmed.

2. On 13th May 2016 the applicant John Kiboo filed the present application seeking to have the grant revoked/annulled. His basic complaint was that he was the son of the deceased, and the only beneficiary, who had no knowledge of the petition having been filed, and whose consent had not been sought before the petition was filed.

3. The respondent swore a replying affidavit to state that after the deceased died, three years passed without the applicant petitioning for a grant. This is what had led him to cite the legal representatives but that they had failed to petition, and it was at that appoint that he filed the petition. While filing the petition, he stated, he asked the applicant to be enjoined in the application and even went together with him to the chief to try and get him to come along in the petition. He declined.

4. The applicant and the respondent each testified in support of his case. The respondent was

represented by M/S Chepngeno and the applicant was not represented. The respondent's counsel filed written submissions. I have considered all the evidence and the submissions.

5. There is no dispute that the citation dated 14th May 2014 and filed on 19th January 2014 was addressed to the widow of the deceased. She was the one who was being asked to accept or refuse to petition for the grant of letters of administration. The petition was not served on the applicant. The grant was revocable for want of knowledge on the part of the applicant. Secondly, when the respondent filed the petition he indicated therein that Veronicah Wanjiru Kanyoike was the widow of the deceased and that the applicant was the son of the deceased. This was contained in Form 38 of the **Probate and Administration Rules**. However, neither of these provided any consent.

6. Under **section 66** of the **Law of Succession Act (Cap.160)** and **rules 7(1)(e)** and **26(1)** of the **Rules**, the applicant who was entitled to petition for the grant of letters of administration in respect of the estate of the deceased, had not renounced his right and therefore his consent was mandatory (**In the Matter of the Estate of Marioko Njeru Migwi (Deceased) [2014] eKLR**). Accordingly, the grant issued to the respondent was revocable as the proceedings leading to the same were defective in substance.

7. It should also be pointed out that the only estate the deceased left was land parcel Kiganjo/Kiamwangi/599. This was not the subject of the sale agreement referred to in the foregoing. In respect of the estate of the deceased, the respondent was owed the compensation above. He was otherwise not a beneficiary to the estate. His interest was limited to him claiming compensation, pursuant to the Kiambu case, from the administrator of the estate.

8. In short, I find that the grant issued to the respondent was not valid and is consequently revoked with costs.

9. There being no other beneficiary to the estate of the deceased, I direct that a grant of letters of administration be issued to the applicant John Kiboo who shall, within 60 days, file application to confirm the same. The application shall be served on the respondent who shall make his claim to the estate.

SIGNED at NAIROBI this 14TH day of SEPTEMBER 2017.

A.O. MUCHELULE

JUDGE

DATED and DELIVERED at NAIROBI this 18TH day of SEPTEMBER 2017.

W. MUSYOKA

JUDGE



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