



In re Estate of Bipin Naran Patel (Deceased) (Succession Cause 9 of 2020) [2023] KEHC 471 (KLR) (26 January 2023) (Ruling)

Neutral citation: [2023] KEHC 471 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
SUCCESSION CAUSE 9 OF 2020
JN ONYIEGO, J
JANUARY 26, 2023**

BETWEEN

KIRAN NARAN BABHA APPLICANT

AND

ANUPAMA SAIKIA ADMINISTRATOR

RULING

1. The deceased herein died intestate on January 7, 2020, while domiciled in Kwale Kenya. On February 26, 2020, Anupama Saikia(hereafter the petitioner/respondent) petitioned for a grant of representation in her capacity as the widow. She listed herself as the sole survivor and beneficiary to the deceased's estate. That the deceased and her were never blessed with children hence the sole heir to the estate.
2. A grant of letters of administration intestate was made and issued on December 11, 2020 to the petitioner/administratrix/respondent. Before the expiry of six months, the petitioner filed an application dated January 12, 2021, seeking confirmation of the grant the expiry of six months notwithstanding after claiming that she was the sole beneficiary and dependant of the estate and that no objection had been filed.
3. Persuaded by the grounds cited, the court confirmed the grant on March 12, 2021. Subsequently, *vide* a summons for revocation or annulment of a grant, Kiran Naran Babha(hereafter the applicant) a brother to the deceased and also claiming to be acting with the consent and on behalf of his sister Kalpana Naran Babha and sister inlaw one Shobhna Bhen Patel, sough revocation of the grant herein on grounds that; the proceedings to obtain the grant were defective in substance; the grant was obtained fraudulently by the making of a false statement and /or by concealment from court of material facts and; the grant was obtained by means of untrue allegations of facts essential in point of law to justify the grant.



4. The application is supported by grounds stated on the face of it and the averments contained in the affidavit in support sworn by the applicant on April 7, 2021. The applicant's claim is that; the petitioner a widow to the deceased did not consult nor seek consent from the deceased's siblings him included; the petitioner/respondent had failed to include as beneficiaries the deceased's siblings; several assets comprising the estate were omitted; the speed at which the grant was confirmed was suspect and intended to exclude the applicant and his siblings from the management of the estate of the deceased; the petitioner had hidden a will made by the deceased.
5. In response, the petitioner filed of opposition dated December 14, 2021 stating that; she was the sole beneficiary of the estate being the only spouse to the deceased; the deceased's siblings were not dependants to the deceased and; the applicants were made aware of these proceedings.
6. When the matter came up for directions, the court directed parties to file witness statements and documentary exhibits. The matter then proceeded through *viva voce* evidence.
7. During the hearing, the applicant adopted the content contained in the affidavit in support of the application and his witness statement filed on December 7, 2021 which are basically similar.
8. On her part, the petitioner /respondent also adopted the content contained in her witness statement dated December 14, 2021 thus stating that the applicant and his siblings plus their sister in-law being a wife to Anil their late brother were not entitled to a share hence she had no business in including them as beneficiaries.
9. Upon close of the case, parties agreed to file written submissions.
10. Through the firm of Victor Otieno and Associate Advocates, the applicant filed his submissions on August 1, 2022 basically reiterating the testimony of the applicant. That the grant was obtained fraudulently and through concealment of material information and facts in that the petitioner did not disclose the existence of other beneficiaries nor obtain their consent.
11. On her part, the petitioner /respondent filed her submissions on September 21, 2022 through the firm of MK Mwangi Advocates. Equally, counsel adopted the evidence contained in the respondent's witness statement. According to learned counsel, the respondent was entitled to petition for the grant as a person who ranks in priority pursuant to section 66 of the *Law of Succession Act*. In support of that proposition, counsel referred to the case of *In re estate of Muthoni Njoroge (deceased)(2021) eKLR* and *In re Estate of Festo Akwera Kusebe(deceased)(2019) eKLR* in which both courts upheld the position that under section 66 of the *LSA*, a spouse ranks in priority in petitioning for a grant of representation.
12. Counsel further submitted that the applicant and his siblings having conceded that they were not dependants to the deceased have no right to lay any claim over the property of their late brother. According to counsel, relatives to the deceased are invited to come on board only where the deceased was not survived by a spouse nor children. To buttress this position, the court was referred to the case of *In re estate of George Ragui Karanja(deceased)(2016) eKLR*.

Analysis and Determination

13. I have considered the application herein, response thereto and rival submissions by both counsel. The only issue that emerge for consideration is whether the applicant has established the grounds for



revocation of the grant. The law governing revocation of a grant is spelt out under section 76 of the [Law of Succession Act](#) which provides as follows;

“A grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by any interested party or of its own motion—

- a. That the proceedings to obtain the grant were defective in substance;
- b. That the grant was obtained fraudulently by the making of a false statement or by the concealment from the court of something material to the case;
- c. that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently;
- d. That the person to whom the grant was made has failed, after due notice and without reasonable cause either—
 - i. To apply for confirmation of the grant within one year from the date thereof, or such longer period as the court has ordered or allowed; or
 - ii. To proceed diligently with the administration of the estate; or
 - iii. To produce to the court, within the time prescribed, any such inventory or account of administration as is required by the provisions of paragraphs (e) and (g) of section 83 or has produced any such inventory or account which is false in any material particular; or
- e. That the grant has become useless and inoperative through subsequent circumstances”.

14. It is therefore incumbent upon a party seeking revocation of a grant to prove any of the grounds set out under section 76 of the [Law Of Succession Act](#). See *Matheka and another v Matheka (2005) KLR 455*.

15. The crux of the matter before the court is that the respondent did not involve nor seek consent of the applicant and his siblings (in-laws) before petitioning for the grant. It is trite law that a party seeking a grant must involve or seek the consent of those interested or entitled to a share in the estate. In the case of *Samuel Wafula Wasike v Hudson Simiyu Wafula (1993) LLR (CAK)* the court held that without obtaining consent of persons who had prior right to the grant and on the basis of facts concealed from the court, is liable for revocation. Similar position was held in the case of [Jacinta Wanja Kamau v Rosemary Wanjiru Wanyoike and Another \(2013 eKLR\)](#) where the court stated that:

“Lastly, it is apparent from the face of the application for confirmation of the grant that the consent of Samuel Wanyoike Magondu a beneficiary of the estate was not obtained as stipulated by rule 40 (8) P & A. In the absence of such consent, the grant could not have been confirmed. The application could only have been set down for hearing as stipulated by rule 40 (8). From the foregoing, we are satisfied that the respondent had locus standi to make the application for revocation; that the application for review was competent and meritorious; that the subordinate court had jurisdiction to entertain the application and that the appeal has no merit”.

16. In the instant case, parties are in agreement that the respondent was a wife to the deceased and that she and the deceased were not blessed with any child biological or otherwise. It was also pleaded by the applicant that their parents are not a live. The key question is, who between the applicant and his



siblings and the respondent was in priority entitled to take a grant of representation. To answer that question, section 66 of the [Law of Succession Act](#) does provide as follows;

“Preference to be given to certain persons to administer where deceased died intestate-

When a deceased has died intestate, the court shall, save as otherwise expressly provided, have a final discretion as to the person or persons to whom a grant of letters of administration shall, in the best interests of all concerned, be made, but shall, without prejudice to that discretion, accept as a general guide the following order of preference -

- (a) surviving spouse or spouses, with or without association of other beneficiaries;
- (b) other beneficiaries entitled on intestacy, with priority according to their respective beneficial interests as provided by Part V;
- (c) the Public Trustee; and
- (d) creditors:

Provided that, where there is partial intestacy, letters of administration in respect of the intestate estate shall be granted to any executor or executors who prove the will.

17. From the above provision, it is clear that the respondent being a spouse was in order of preference entitled to take out a grant of representation. This position was clearly espoused in the case of *In Re estate of Festo Akwera Kusebe (deceased)*([supra](#)).
18. Besides, section 36 of the [Law of Succession Act](#) is quite emphatic and clear on what happens and the right of a surviving spouse where a co-spouse predeceases him or her and where no child is left. The said provision provides as follows;

“Where intestate has left one surviving spouse but no child or children-

- (1) Where the intestate has left one surviving spouse but no child or children, the surviving spouse shall be entitled out of the net intestate estate to-
 - (a) the personal and household effects of the deceased absolutely; and
 - (b) the first ten thousand shillings out of the residue of the net intestate estate, or twenty per centum thereof, whichever is the greater; and
 - (c) a life interest in the whole of the remainder:

Provided that if the surviving spouse is a widow, such life interest shall be determined upon her re-marriage to any person.

- (2) The minister may, by order in the Gazette, vary the amount specified in paragraph (b) of subsection (1).
- (3) Upon the determination of a life interest created under subsection (1), the property subject to that interest shall devolve in the order of priority set out in section 39.

19. In view of the above case law cited and the relevant statutory provisions, it is clear that the respondent being the only surviving spouse, was entitled in law to petition for the grant. She had no business



seeking consent nor consulting anybody hence there was no fraud nor concealment of any material information nor facts to warrant revocation of the grant.

20. As to whether the respondent ought to have given a share to the applicant and his siblings, section 36 above quoted is clear. Since the applicant and his siblings are not claiming dependency, the respondent had no business making provision for them. From his evidence on cross examination, the applicant stated that he was an engineer and that none of the deceased's siblings ever relied or depended on the deceased. In the circumstances, they are not entitled to a share of the estate. A mere relationship with a deceased person does not automatically confer a right of inheritance to a deceased's person's property.
21. I agree with the interpretation given by J Musyoka in [Re Estate of Joshua Orwa Ojodeh Succ Cause 2015/2012](#) at paragraph 6 where he stated that;
- “Going by the above provision, where a deceased person is survived by a spouse or child or children, the other relatives are not entitled to a share in the intestate estate of such person. The spouse and child are entitled to the estate to the exclusion of all the other relatives include the parents of the deceased. Parents are only entitled where there is no surviving spouse or child...”
22. In view of the above finding, it is clear that the applicants have no room in claiming a share of the deceased's estate. In the circumstances, it is my holding that the respondent did move the court properly hence nothing defective in the proceedings. Accordingly, I do not find any merit in the application herein hence the same is dismissed with no order as to costs

DATED, SIGNED AND DELIVERED VIRTUALLY AT MOMBASA THIS 26TH DAY OF JANUARY 2023

J N ONYIEGO
JUDGE

