



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MALINDI

SUCCESSION CAUSE NO 28 OF 2020

ESTATE OF KATANA VUKO WALE.....PLAINTIFF

VERSUS

HAMISI KATANA VUKO.....DEFENDANT

Coram: Hon. Justice R. Nyakundi

Ms Nyoro Advocate for the Applicant

Kaingati Kamonjo & Co Advocates for Respondent

RULING

The Petitioners Kashutu katana Vuko and Stephen Katana Vuko filed the Summons for revocation and or annulment of grant issued to Hamisi Katana Vuko on 22.5.20087 in respect of the estate of the deceased Katana Vuko Wale be revoked or annulled.

The Petitioners case is that they are adults positively identified and known as the Widow and son of the late Katana Vuko Wale. Who died sometimes back on 22.2.1994. That the deceased upon his death was survived by two wives namely Kache Katana Vuko, now also deceased, Kashutu Katana Vuko (at the time of the petition aged 46 years old). Further the deceased was blessed with the following children from the first House:

Kazungu Katana Vuko – (deceased) Son

Andrew Kenga Vuko – (deceased) Son

Charo Katana Vuko – Son

Shehe Katana Vuko – (deceased) Son

Khamisi Katana – son

Whereas in the second house the children are namely:-

Stephen Katana Vuko - Son

Kahindi Katana Vuko – Daughter

Davis Katana Vuko – Son

That sometimes back the administrator Hamisi Katana Vuko was issued with grant of Letters of Administration to distribute the estate of the deceased without the consent from other beneficiaries. That after realizing the secret application for grant of Letter of administration, the Succession caused No. 5 of 2008, it necessitated filing Cause No 28 of 2020. The file in question remains missing at Kilifi Law Courts Registry. That it is clear from the text of the Chief's letter dated 17.5.2017 which sets out the true beneficiaries of the estate under the Law of Succession Act, this Application for revocation has been made.

As regards the administrator's response, it's all laid down in the replying affidavit of Katana Hamisi filed in court on 18.11.2020. The facts upon which the administrator opposed the Summons for revocation include the following averments:

(a) that indeed, he was appointed as the administrator of the estate of the deceased which culminated in the succession cause no 5 of 2018.

(b) that after acquiring the grant of letters of administration and certificate of Confirmed grant, to the estate, specifically on LR NO. MAJAONI/BLOCK 15A/45 was sub divided amongst the beneficiaries from the first house.

(c) that the second house of kashutu katana vuko had a property at Kaembeni that belonged to the deceased which remained to be in their possession. That the sale and transfer of the portion of land alleged in the supporting affidavit was by the consent of the beneficiaries and interest holders. That there has been no intermeddling with the estate of the deceased as deponed by the petitioners.

Determination

An issue of revocation or annulment of grant of Letters of Administration and the jurisdiction of the court to entertain the application to revoke the grant is a matter properly expressed under Section 76 of the Law of Succession which states that:

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

(a) *That the proceedings to obtain the grant were defective in substance,*

(b) *That the grant was obtained fraudulently by making of a false statement or by concealment from the court of something material to the case*

(c) *That the grant was obtained by means of untrue allegations of facts essential the point of Law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently. The revocation or annulment is also governed by Rule 26 of the Probate & Administration Rules which states that:-*

“Letters of Administration shall not be granted to any applicant without Notice to every other person entitled in the same degree as or in the priority to the applicant. An application for a Grant where the applicant is entitled in a degree equal to or lower than that of any other person shall, in default of renunciation, or written consent, in the form 38 or 39, by all persons so entitled in equally or priority be supported by an affidavit of the applicant and such other evidence as the court may require”

These sections signifies that a petitioner for grant of Letters of Administration will be deemed prima facies to have obtained a fraudulently grant, with respect of the state if he or she fails to issue notice to any of the dependents or beneficiaries to the estate of the deceased, including obtaining their necessary consents as mandatory provided in the Succession Act. Equally the grant of Letters turn out to be defective if the evidence shows that it was issued in error, misrepresentation of facts, concealment or nondisclosure of material evidence relevant and admissible for the making of the grant of representation. In one of the Leading judgment of the court in this area of Law in Matheka and Another V Matheka (2005) EA 251 it is clearly stated as follows:

“A grant may be revoked either by application or by an interested party or on the courts own motion. Even when revocation is by the court upon its own of motion, there must be evidence that the proceedings to obtain the grant were defective in substance, or that the grant was obtained fraudulently by making a false statement or by concealment of something material to the case or that the grant was obtained by means of untrue allegations of facts essential. In point of Law or that the person named has failed to apply for Confirmation or to proceed diligently with the administration of the estate. The grant may also be revoked if it can be shown to the court that the person to which the grant has been issued has failed to produce to the court such inventory or account of administration as may be acquired”

I will also add that the crucial deficiency of a grant sufficient for the court to grant an order for revocation or annulment is as stated in the matter of the estate of **Ngaii Gatumbi alias James Ngaii Gatumbi (deceased) Nairobi Succession Cause No 783 OF 1993.**

In that court the application for revocation was brought by persons who were omitted from the Petition for Grant, of Letters of Administration although, they were equally entitled to apply, but were not notified of the Petition neither were their respective consents obtained. The court revoked the grant on the ground that it had been obtained by a defective or illegal process. (See also), in the matter of the estate **Isaac Kireru Njuguna (deceased) Nairobi Succession Cause Number 1064 of 1994.**

In the matter of the estate of **Yusuf Mohamed (deceased) Mombasa High Court P & A No. 434 of 1995)** Applying the above principles as it transpired in this instance Section 29 of the Law of Succession clearly sets out an account on the definition and hierarchy of dependents of the deceased who are bound to benefit from the estate, subsisting at the time of his or her demise. Secondary, Section 35, 37, 38 and 39 of the said Act fundamentally and whether any contradictions sets out the order of priority of the persons entitled to inherit the deceased estate. The provisions point out first it is the spouse or spouses and their children.

Apparently, In the Petition for Grant of Letters of Administration and subsequent confirmation the respondent initiated proceedings without notice to the other beneficiaries or obtained their respective consents. In the respondent's own admitted facts it's clear that there were no

consents sought and or obtained from the Petitioner to this summons for revocation.

On this part of the allegation the petitioners affidavit evidence adduced demonstrates Lack of knowledge and participation in the process of the making of the grant before the court which was finally confirmed on 29.7.2010.. There is also a hand written letter of the Chief dated 17.5.2017 positively identifying survivorship and beneficiaries entitled to inherit the estate left behind by the deceased.

Thus, in the circumstances of this case, I find it difficult to conceive how the respondent went ahead to obtain Letters of Grant of Administration in absence of notice and consent to the spouse and children of the deceased. It was oppressive and unjust for the respondent as the administrator of the estate to intermeddle with the assets of the estate yet there was no proper mode of distribution to the other beneficiaries, it is no wonder that the petitioners are unable to trace the primary file and proceedings, in Succession Cause No. 5 of 2008 at Kilifi, Principal Magistrate's court.

Further, I think it can generally be presumed that the missing of the record which goes to the root of proving the alleged mis representation, fraud, concealment and fatal defect in the proceedings on the making of the grant to the respondent was to deny the beneficiaries that constitutional right to access to information held by state under Article 35 of the Constitution to pursue their right to a fair hearing in the intestate proceedings. The fact of the matter is that from the affidavit evidence of the petitioners, there is prima facie case in their favor that the respondent as one of the beneficiaries purported to have acted in good faith committed a fraud/false misrepresentation in submitting documents to be issued with grant of Letters of Administration in Succession Cause No. 5 of 2008.

On this Legal proposition stated in **Lazarus Estates Ltd v Beastey (1956), QB 702 and 712** as follows:

“No court in this land will allow a person to keep an advantage which he has obtained by fraud. No judgment of a court, no order of a Minister can be allowed to stand if it has been obtained by fraud. For this unravels it, vitiates, judgment, contracts and all transactions whatsoever”

In the instant case the petitioners have produced uncontroverted documentary evidence on transactions relating to the Estate of the deceased with respect to **LR/Majaoni/Block 5A/45** subdivisions, disinheriting other beneficiaries. The respondent in his replying affidavit confesses and admits to this statement of fact. In addition to the valuable evidence provided for in support of the petitioner for revocation, this summing up of the matter appears to me to show that the respondent never exhibited a true accountability of his administration of the estate as provided under Section 83 (G) of the Law of Succession.

To complete the administration of the estate with effect from the confirmation of grant the law enjoins the administrator to file a probate account within six (6) months from the time of confirmed Grant of Letters of Administration. The result of all these evidence which presents itself to the instant application, It's the courts view a valid summons of revocation duly brought by the petitioner Satisfactorily, and on a balance of probabilities discharges the burden of proof on all allegations pursuant to Section 76 (1) of the Law of Succession Act. For this reasons, the court grant the orders for revocation of grant of letters issued and Confirmed in this court on 29.7.2020.

In the upshot, First I find a strong basis for disturbing the Learned Trial Magistrate decision on the making of the grant of letters of administration to the estate of the deceased Kataka Vuko Wale issued to Hamisi Katana.

Secondly, the letters of confirmed grant of administration dated 27.7.2010 purporting to administer the estate of the late Katana Vuko be and is hereby annulled on ground of an omission which left out the spouse and surviving children of the deceased, as supported by the Chief's letter dated 17.5.2017. Therefore, the grant was obtained by making false statement and concealing material facts.

Thirdly, the administrator and respondent herein did not diligently proceed with proper administration of the estate for failure to account and render a true Probate account to the court within six months as expressly provided for in Section 83 1 (G) of the Law of Succession Act.

Fourthly, in evaluation of the evidence I am of the conceded view that all consequential transactions that were effected with the said fraudulent and fatally defective grant be revoked and set aside by the Land Registrar Kilifi and the Title deed to revert to the original registered owner pending the hearing and determination of intestate administration.

Fifth, In this respect an order of injunction and entry of a restriction order be entered by the Land Registrar Kilifi against all registered parcels of Land Know as LR Majaoni/Block 5A/45 pending final orders of this court.

Sixth, in view of the above and pursuant to Rule 73 (i) of the Probate and Administration Rules and Section 66 (1) of the Law of Succession Act and further to avoid any delay in disposition of the Succession Cause Letters grant of administration be issued Jointly to Kashutu Katana Vuko and Charo Katana Vuko.

Accordingly, the joint administrators to move with speed to file an application for grant of Letters of Administration identifying the inventory of assets and liabilities of the deceased estates for distribution to the beneficiaries. As pointed under Section 93 of the Law of Succession Act, any transfer of shares or properties of the estate be determined on merit in the application for confirmation of grant. The petitioner shall bear the costs of the application.

DATED, SIGNED AND DELIVERED AT MALINDI THIS 28TH DAY OF JANUARY, 2021.

R. NYAKUNDI

JUDGE

This Ruling has been dispatched electronically to the respective emails of the advocates in the matter.

(jmateadv@yahoo.co.uk and johnkaingati@gmail.com)