



REPUBLIC OF KENYA



KENYA LAW
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**In re Estate of Rashid Mohamed (Deceased) (Succession Cause
150 of 1998) [2021] KEHC 9800 (KLR) (12 February 2021) (Ruling)**

Neutral citation: [2021] KEHC 9800 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
SUCCESSION CAUSE 150 OF 1998
JN ONYIEGO, J
FEBRUARY 12, 2021
IN THE MATTER OF THE ESTATE OF RASHID MOHAMED DECEASED**

BETWEEN

MOHAMED RASHID MOHAMED APPLICANT

AND

RASHID MOHAMED & 2 OTHERS RESPONDENT

RULING

1. Vide a summons for revocation of grant dated September 18, 2020, one Mohamed Rashid Mohamed moved this court pursuant to section 76 *Law of Succession Act* seeking revocation of the grant herein on grounds that;
 - (a) The proceedings to obtain grant were defective in substance.
 - (b) The grant was obtained fraudulently by making of a false statement or by the concealment from the court of something material to the case.
 - (c) The grant was obtained through concealment of material facts.
2. The application is premised on grounds set out on the face of it and an affidavit sworn by Mohamed Rashid Mohamed the applicant herein. In response, the respondents (administrators) filed a replying affidavit sworn on November 6, 2020 by Nassoro Rashid Mwarhereria and Mohamed Rashid Mohamed. In his rejoinder, the applicant filed a supplementary affidavit sworn on November 20, 2020
3. When the application came up for hearing on November 23, 2020, Mr. Mwawasi representing the applicant and Ambwere appearing for the Respondents indicated that they wished to rely on their respective affidavits to dispose of the application without calling their deponents or any witness. Learned Counsel basically requested for a Judgment date. The court went ahead to fix judgment on December 28, 2020.



4. The gist of the application is that the deceased has two houses having married two wives but divorced with the second wife who was the mother to the applicant. According to the applicant, his mother now deceased was not consulted nor involved when the respondents(administrators) petitioned for the grant.
5. That he and his brother Mohammed chivatsi who were minors then were not provided for nor were they listed as beneficiaries. That the small portion he was allocated is of no value as it is located on a flowing river. That his younger brother was not provided for hence material non- disclosure of the existence of other beneficiaries. The respondents on the other hand denied that Mohammed Chivatsi was sired by their father as he was born 6 years after their father had divorced with the applicant's mother. They averred that the applicant was provided for and that the remaining assets have a dispute with third parties.
6. After carefully perusing the pleadings more particularly the affidavits in support and in reply to the application, there are several issues of fact which needs evidence to be adduced and possibly be subjected to cross examination.
7. For instance, one needs to prove that the applicant was provided for in the grant. This is because the certificate of confirmation only refers to one Mohamed Rashid Mohammed being one of the administrators and not Mohammed Rashid Mohammed the applicant. Further, there is need to adduce evidence to confirm whether Mohamed Chivatsi was sired by the deceased or not. If the answer is positive, why was he not provided for?
8. With this unanswered matters of fact, it is hard for the court to arrive at a just judgment. For those reasons, I wish to direct that parties file witness statements and documentary evidence if any within 30 days and thereafter hearing date be taken on priority basis for hearing of the matter viva voce.

DATED, SIGNED, DELIVERED VIRTUALLY THIS 12TH DAY OF FEBRUARY 2021.

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J.N. ONYIEGO

JUDGE

