



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

SUCCESSION CAUSE NO 302 OF 2015

IN THE MATTER OF THE ESTATE OF THE LATE HESBON FRANCIS OTIENO OLUOCH (DECEASED)

AND

IN THE MATTER OF AN APPLICATION FOR REVOCATION OF GRANT OF LETTERS OF ADMINISTRATION ISSUED TO IRENE AWUOR ODHIAMBO AND GILBERT OLUOCH

IRENE AWUOR ODHIAMBO.....1ST PETITIONER

GILBERT OTIENO OLUOCH.....2ND PETITIONER

VERSUS

YVETTE ANITA OLUOCH.....OBJECTOR

RULING (1)

1. On 4th April 2017, the Objector, herein filed Summons for Revocation or Annulment of Grant of even date. She sought for orders that the Letters of Administration for the estate of the deceased issued on 5th May 2016 to the 1st and 2nd Petitioners herein be revoked and annulled. She also sought money for school fees to enable her continue with her studies. Her Summons was supported by affidavit that she swore on even date.
2. She averred that the deceased was survived by three (3) wives who included the 1st Petitioner herein. The 1st Petitioner was the deceased's third wife. The Objector's mother was the deceased's second wife. She pointed out that the 1st Petitioner and the first wife each had two (2) children each while she was the only child to her mother.
3. She was emphatic that she was a dependent of the deceased herein within the meaning of Section 29 of the Law of Succession Act as she was his biological daughter. It was her averment that the Petitioners obtained the Grant fraudulently by intentionally excluding her name from the estate of the deceased and not seeking her consent in obtaining the same.
4. She contended that sometimes in 2016, the deceased's death gratuity amounting to Kshs 3,900,000/= was sent to the Public Trustee in order for the same to be divided equally among the beneficiaries of the deceased. Each beneficiary was entitled to Kshs 650,000/=. She stated that it was after she lodged a complaint with the Public Trustee inquiring on the estate of the deceased that the Petitioners included her as a beneficiary of the deceased's estate.
5. She asserted that the Public Trustee gave her Kshs. 200,000/= for her tuition fees. She was to be paid the balance of Kshs 450,000/= at a later date. She averred that in early 2017, she learnt that the Petitioners opened a joint account number 011xxxxxxxxx at Cooperative Bank of Kenya where the Public Trustee remitted the remaining sum of Kshs 2, 536, 213.55. She explained that she had not received her share of Kshs. 450,000/= to date.
6. She added that she also learnt later that the Petitioners had received AFYA SACCO savings of the deceased without her knowledge. She stated that since she depended entirely on the deceased for her daily provisions and school fees, she has greatly suffered. She asserted that the Petitioners had intermeddled with the deceased estate as they collected rent from tenants of Plot No 361 Migosi Settlement Scheme belonging to the deceased.
7. She contended that the proceedings of obtaining the Grant of Letters of Administration were defective and that the grant was obtained fraudulently through false statements of deliberate concealment and distortion of material facts. She thus urged this court to appoint her as a co-administrator of the deceased's estate so as to protect her interests.

8. Both the Petitioners did not file any response to her Objector's Summons for revocation. However, the 2nd Petitioner filed Written Submissions dated 19th January 2021. They were filed on 15th February 2021. On her part, the Objector herein filed her Written Submissions dated 6th February 2021 on 21st February 2021.

LEGAL ANALYSIS

9. The Objector relied on Section 76 of the Law of Succession Act and argued that she had demonstrated that the grant should be revoked on grounds that it was fraudulently obtained by making a false statement as to concealment from the court, of facts material to the giving of the grant; and particularly failing to disclose to the court that there are other beneficiaries including herself. In this regards, she placed reliance on the case of **Ibrahim vs Hassan & Charles Kimenyi Macharia, Interested Party [2019] eKLR** where the court relied on the foresaid grounds and revoked the grant therein.

10. She submitted that she qualified as beneficiary of the deceased because she was his child as defined in Section 3 (2) of the Law of Succession Act. She urged this court to discredit the information provided by the Chief's letter that was relied upon in obtaining the impugned grant. She pointed out that she annexed a copy of the Certificate of Birth that showed that she was the deceased's biological daughter.

11. She asked this court to consider the holding in the case of **S B M vs M N M & Another [2017] eKLR** and revoke the grant and direct that a fresh grant be issued to include other beneficiaries. She also prayed that this court restrains the Petitioners from intermeddling in the deceased's estate.

12. Notably, she did not expound what part of the holding in the said case of **S B M vs M N M & Another** that she wanted this court to consider or who the other beneficiaries she wanted included in the fresh grant, other than herself, were.

13. According to section 76 of the Law of Succession Act Cap 160 (Laws of Kenya):-

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 order or allow; 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. An order for revocation of the grant can thus only be given if the aforesaid grounds for revocation had been satisfied. A similar finding was arrived at **In the Matter of the Estate of L A K – (Deceased) [2014] eKLR**.

15. Notably, the Petitioners did not include the Objector herein in the P & A 5 that was attached to the Petition for a grant of Letters of Administration. The Petitioners did not challenge the Certificate of Birth that the Objector annexed to her Summons for Revocation of Grant. The 2nd Petitioner and his biological brother, Henry Angula Oluoch had only submitted that they did not recognise her as one of the beneficiaries of the deceased's estate.

16. The Petitioners herein did not also deny her evidence that the Public Trustee gave her a sum of Kshs 200,000/= being her portion of the deceased's death gratuity. Her evidence that she was the deceased's daughter thus remained un rebutted. The Chief's letter that the Petitioners relied upon in obtaining the Grant herein which resultantly disinherited the Objector herein was immaterial as the Petitioners may have failed to disclose that she was indeed a beneficiary of the deceased's estate.

17. This court was therefore persuaded that there were false statements concerning the petitioning for the grant of Letters of Administration intestate herein and hence found and held that the grant was obtained fraudulently by virtue of concealment of a material fact to the detriment of the Objector herein.

18. Further, the proceedings of obtaining the grant of letters of administration were defective as stipulated in Section 76(a) of the Law of Succession for want of the Objector's consent which was to be expressed in Form 38. As at the time of the Petition for Letters of Administration was lodged in court on 20th March 2015, the Objector was over eighteen (18) years of age.

19. After carefully considering the Objector's affidavit evidence, which was uncontroverted and her Written Submissions, this court came to the firm conclusion that she proved that there was merit in revoking and/or annulling the Grant of Letters of Administration that was issued to the Petitioners herein as stipulated in Section 76 of the Law of Succession Act.

20. Having said so, the court has inherent power to make such orders as may be necessary for the ends of justice or to prevent abuse of the court process under Rule 73 of the Probate and Administration Rules. The court was of the view that the Objector's interests could be safeguarded by her being made as an administrator of the deceased's estate.

DISPOSITION

21. For the foregoing reasons, the upshot of this court's decision was that the Objector's Summons for Revocation and/or Annulment of Grant dated and filed on 4th April 2017 was merited and the same be and is hereby allowed in terms of Prayer No (2) therein.

22. The Grant of Letters of Administration issued herein on 5th May 2016 be and is hereby revoked but amended to reflect the change to the effect that the Objector herein has been enjoined as a co-administrator of the deceased's estate together with the Petitioners herein.

23. As the Objector had not provided to this court her current status of education and based on the fact that the Summons herein were lodged back in 2017, this court was not persuaded that it should grant Prayer No (3) relating to school fees. However, for the avoidance of doubt, she is at liberty to pursue her claim for school fees, if still applicable.

24. It is so ordered.

DATED AND DELIVERED AT KISUMU THIS 28TH DAY OF JULY 2021

J. KAMAU

JUDGE