



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 1914 OF 1997

IN THE MATTER OF THE ESTATE OF VIOLET NJERI NJOMO (DECEASED)

JANET WANGARE NJOMO.....1ST APPLICANT

WINNIE MUKAMI NJOMO.....2ND APPLICANT

MARGARET WANJIKU NJOMO.....3RD APPLICANT

VERSUS

JONAH KARANJA NJOMO.....RESPONDENT

RULING

1. By way of Summons for Revocation of Grant, dated 31st January, 2020 the Applicants sought revocation of the Grant of Letters of Administration in respect of the Estate of Violet Njeri Njomo (deceased) granted to Jonah Karanja Njomo and Nguru Njomo and confirmed on 16th November, 1998. They also sought a full and accurate account of the administration of the estate from the Respondent and for the cancellation of all titles or transfers in respect to the properties known as Ngenda/Gathage/248, Ngenda/Gathage/T.322 and Maguguni.

2. The application was premised on the grounds that, the Respondent secretly petitioned for letters of administration without involving his female siblings. It was their case therefore that the grant was fraudulently obtained by the administrators through concealment from Court, of material facts that the Applicants are daughters and were not involved in the process of obtaining the grant. The grant obtained is therefore defective in substance.

3. Janet Wangare Njomo, Winnie Mukami Njomo and Margaret Wanjiku Njomo all swore separate affidavits dated 31st January, 2020 in support of the summons for revocation. It was their case that the deceased herein was their mother who died on 29th May, 1984. That the Respondent herein who is their brother and a son of the deceased secretly petitioned and was issued with a grant of letters of administration intestate which was confirmed on 16th November, 1998. They asserted that they were never mentioned in the proceedings to obtain the grant yet they are children of the deceased.

4. They contended that upon the confirmation of grant, their brothers transferred the property known as Ngenda/Gathage/248 into their own names. That two of the said brothers namely Nguru Njomo (one of the administrators) and Bernard Kariuki Njomo are now deceased and their widows have begun succession proceedings with regard to their husband's estate which include the property illegally acquired from the estate of the deceased. Further that on 10th September, 2001, by way of summons for rectification of grant, the 1st Applicant was given the property known as Maguguni. She however denied knowledge of its existence or its location.

5. It was their position that the actions by the Respondent to inequitably distribute the deceased's estate to themselves and failure to render accounts of the administration of the deceased's estate is illegal. They averred that unless the orders sought are granted, the administrator will continue mismanaging, wasting, mishandling and disposing of the deceased's estate to the detriment of other lawful beneficiaries.

6. In his response dated 26th April, 2021 the Respondent stated that he had no objection to the Application. He prayed that the same be granted with no orders as to costs.

7. On 14th June, 2021 when the matter came up for hearing Learned Counsel for the Applicant M/s Nditu holding brief for Mburu Machua reiterated the contents of the affidavits in support and urged the Court to grant the prayers sought in the summons.

8. Although the application is not opposed, this Court has the duty to consider whether the grounds on which it is brought conform to **Section 76** of the Law of Succession Act. The main ground the application raises for determination is whether the grant was fraudulently obtained by the administrator through concealment from court of material facts.

The Court has power to revoke a grant in the circumstances set out in **Section 76** of the Law of Succession Act, 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 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.”

9. The Applicants pleaded that the Respondent secretly petitioned for letters of administration the estate of their late mother without their knowledge or consent. They asserted that they were not even mentioned in the proceedings to obtain the grant as beneficiaries of the deceased's estate. It was their case therefore that the grant was fraudulently obtained by the administrators through concealment from court of material facts. These allegations were not disputed by the Respondent/Administrator.

10. A perusal of the Petition confirms that indeed two of the three applicants were not listed as children of the deceased. In the affidavit in support of the Petition for Letters of Administration Intestate Form P & A 5, the following are listed as the surviving children of the deceased:-

- i. Jonah Karanja Njomo – Son
- ii. Nguru Njomo – Son
- iii. Simon Njenga Njomo – Son
- iv. Stephen Kamau Njomo – Son
- v. Andrew Kinyanjui Njomo – Son
- vi. Janet Wangare – Daughter

11. Surprisingly, the Chief's Letter dated 17th August 1998 in support of the Petition does not include the 2nd and 3rd Applicants but included Benard Kariuki Njomo as the surviving children of the deceased. It is unclear whether he was beneficiary or his interest in the deceased's estate as estate property was distributed to him. The list of assets available for distribution included Ngenda/Gathage/248, Ngenda/Gathage/T/322 and Maguguni. No part of the properties was distributed to the 1st or 2nd Applicants. From the record, Benard Kariuki Njomo and Nguru Njomo are now deceased. Whether they have any survivors is also unclear.

12. The administrator of the estate went ahead to distribute the estate of the deceased to his sons and one daughter of the deceased excluding the other beneficiaries of the deceased. The information that should be contained in an application for grant of letters of administration is set out in **Section 51(2)** of the Law of Succession Act. The relevant provision is **section 51(2)(g)** of the Act which states as follows: -

“51(2) An application shall include information as to –

(g) in cases of total or partial intestacy, the names and addresses of all previous spouses, children, parents, brothers and sisters of the deceased and of the children of any child of his or hers then deceased”.

13. **Section 51(2)(g)** aforesaid should be read together with **Rule 7(1) (e) (i)** of the Probate and Administration Rules which provides that full disclosure is a mandatory requirement and it does not matter that the deceased made provision for the other survivors during his lifetime. To this requirement there are no exceptions. (*See: Musa Oluoch Aber v Margaret Onyango Ogembo & another [2015] eKLR.*)

14. The court before whom the petition is presented must be able to ascertain who all the survivors of the deceased are from the record. The record before me indicates that the 1st and 2nd Applicant who are daughters of the deceased, were left out. The 1st Applicant also a daughter

was also not involved at the institution of the cause. This amounts to concealment of material facts necessary to determine the cause in a justifiable manner. It is therefore necessary to revoke the grant issued.

15. On the second issue of accounts, the Administrator of the estate of the deceased stands in a fiduciary position so far as the property of the deceased is concerned, and owes a duty to the beneficiaries to render an account to them of his handling of the property in trust for them. It is the duty of the Respondent/Administrator herein to provide records of the assets and income from the estate since he took up its administration. It is clear that since then, he has not provided a full and accurate inventory of the assets and liabilities of the deceased, or a full and accurate account of all dealings concerning the estate up to the date of the account as required under the provisions of **Section 83(h)** of the Law of succession Act.

16. The upshot of the above analysis is that the summons for revocation of grant dated 31st January, 2020 is hereby allowed in the following terms:

- i. The Grant of Letters of Administration in respect of the estate of Violet Njeri Njomo issued to Jonah Karanja Njomo and Nguru Njomo(deceased) and confirmed on 16th November, 1998 be and is hereby revoked.
- ii. A fresh grant is be and is hereby issued to Janet Wangare Njomo and Jonah Karanja Njomo.
- iii. The resultant registration and subsequent transfer of the titles to the properties known as Ngenda/Gathage/248, Ngenda/Gathage/T.322 and Maguguni is hereby cancelled.
- iv. Jonah Karanja Njomo is hereby directed to give a full and accurate account of the administration of the estate of the deceased from the date he took up administration to the date hereof.
- v. The Administrators of the estate of the deceased shall within 60 days of the date hereof file for confirmation of grant including all beneficiaries of the estate of the deceased.
- vi. No orders as to costs.

SIGNED DATED AND DELIVERED IN VIRTUAL COURT THIS 28TH DAY OF JULY, 2021.

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L. A. ACHODE

HIGH COURT JUDGE

In the presence ofAdvocate for the Applicants

In the presence ofAdvocate for the Respondent