



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT EMBU

SUCCESSION CAUSE NO. 158 OF 2014

IN THE MATTER OF ESTATE OF ALFRED KAMURE MBINDU (DECEASED)

VERONICA KERE MBINDU.....1ST ADMINISTRATOR/APPLICANT

JANICA WANJIRU KAMURE....1ST ADMINISTRATOR/APPLICANT

VERSUS

CECILIA MUTHONI KAMURI.....RESPONDENT

RULING

1. Before me is an application dated 3.05.2021 filed by the applicants herein and wherein they seek the following orders:-

1. That this honourable court be pleased to review and set aside the orders dated 15.10.2019 confirming the grant dated 10.07.2019 and issued on 31.10.2019.
2. That the court be pleased to revoke and/ or annul the grant confirmed on 1.12.2015 on the grounds that the same has become useless and inoperative through subsequent circumstances
3. That the grant of letters of administration intestate (or with will annexed) made to Veronica Kere Mbindu, Janice Wanjiru Kamure and Cecilia Muthoni Kamuri in this matter on 10.07.2019 be confirmed.
4. That the costs of the application be in the cause.

2. The application is premised on the grounds on its face and further supported by the affidavit sworn by applicants. The applicants' case is that a grant of letters of administration intestate in the instant cause was made to one Anastacia Igoki who was the respondent's mother and the same was confirmed on 3.12.2015. That the applicants filed for revocation of the said grant and vide the ruling of 19.12.2012, the court struck out the said application and ordered that the said Anastacia be substituted as she was deceased. That as a result of these orders the applicants together with the respondent herein were appointed as administrators of the estate herein on 10.07.2019 and their advocates on record proceeded to have the grant confirmed on the basis that the earlier grant (made to Anastacia) had been revoked and the grant was subsequently confirmed on 15.10.2019.

3. As such, they deposed that the grant confirmed on 3.12.2015 has become inoperative since the administrator therein is deceased and that most of the beneficiaries of the estate were never provided for and the same ought to be revoked. They further deposed that the grant issued on 10.07.2019 ought to be confirmed so that each of the beneficiaries can inherit their rightful share. The beneficiaries of the estate and the mode of distribution was itemized in the affidavit in support of the application.

4. Records indicate that the application came up for hearing and the respondent attended court in person and the respondent was served with the application in court. The court directed that the respondent do file her response to the application and thereafter parties do exchange submissions.

5. However, the respondent herein did not file submissions (and neither did the applicants), As such, it is clear that the application is unopposed. However this does not mean that the application will automatically be allowed on that ground. This court has a duty to examine the same and determine as to whether the same has merits.

6. In prayer 1, the applicants sought for orders that this honourable court be pleased to review and set aside the orders dated 15.10.2019 confirming the grant dated 10.07.2019 and issued on 31.10.2019. From the face of the application, the grounds for this is that their advocates

on record succeeded in having the grant made to them confirmed on 15.10.2019 under a mistaken belief that the earlier confirmed grant (one held by the deceased administrator) had been revoked. However, I have perused the said certificate of confirmation of grant issued pursuant to the said orders (which are subject of review) and I note that what the applicants are essentially trying to do is to alter the mode of distribution on the earlier certificate of confirmation of grant so as to provide for the beneficiaries who had not been provided for in the earlier certificate of confirmation of grant.

7. I note that the estate comprises of two land parcels being LR. Evurore/Nguthi/1226 and LR. Evurore/Nguthi/2358. In the earlier certificate of confirmation of grant, it is indicated that one Amyfrida Wawira Njeru and Loise Wanja Kamure were to get 0.20 Ha out of LR. Evurore/Nguthi/1226 to hold in trust for one Vincent Gitonga Njeru (minor). In the affidavit in support of the application herein, the said share seems to have been reviewed to 0.10 Ha. Patrick Ngari in the earlier certificate of confirmation of grant was given 0.20 Ha out of LR. Evurore/ Nguthi/1226 but the same seems to have been reviewed to 0.10 Ha. Veronica Kere Mbindu was given 0.30 Ha out of LR. Evurore/Nguthi/1226 but which seems to have been reviewed to 0.10 Ha. In relation to LR. Evurore/Nguthi/2358 Amyfrida Wawira Njeru and Loise Wanja Kamure were to get 1.6 Ha to hold in trust for one Sarah Njeri Kamure and Vincent Gitonga Njeru (minors).

8. However, of interest to note is that in the grant earlier confirmed, there is one Eutenzia Nyambura Ngari who was given 0.40 Ha out of LR. Evurore/Nguthi/2358. In the earlier application, she was indicated as a niece to the deceased. However in the proposed mode of distribution, she seems to have been left out. The applicants filed consent to the confirmation of grant dated 3.04.2021 and from the same it appears that Winasenath Karimi Kamure, Amyfrida Wawira Njeru, Fejeslau Ileri Jacob and Loise Wanja Kamure all consented to the said proposed mode of distribution. However, Eutenzia Nyambura Ngari who has been removed from the list of beneficiaries did not consent to the said proposed mode of distribution.

9. It is my view, that despite this court having jurisdiction to review its orders under Rule 63 of the Probate and Administration Rules as read together with Order 45 of the Civil Procedure Rules, and further despite this court having inherent jurisdiction to make orders to make the ends of justice meet (under Rule 73), in the circumstances herein, the order of 15.10.2019 confirming the grant dated 10.07.2019 cannot be reviewed.

10. Further I have perused the court record and note that one David Nthiga Njeru filed an application dated 9.02.2017 seeking prohibitory orders. The said application was withdrawn vide the orders of 3.05.2017. The said David Nthiga Njeru, Patrick Ngari and Veronica Kere Mbindu filed another application dated 2.05.2017 seeking inhibitory and restraining orders. It is the said application which was allowed by Hon. Muchemi J vide the ruling delivered on 19.12.2017. What followed is the application dated 29.03.2018 which sought appointment of the applicants and the respondent herein as the administrators of the estate herein. In the affidavit in support of the said application, the said David Nthiga Njeru and one Robert Muriithi Njeru are indicated to be deceased. However no death certificate was attached to the said application and neither has any been attached to the subsequent application dated 15.08.2019 or the application subject of this ruling.

11. This court has a duty to ensure that the estate of the deceased is distributed to the rightful beneficiaries. The applicants did not depose as to why the Eutenzia Nyambura Ngari was not served with the application. This court takes note that being a niece to the deceased, she was not a beneficiary per se but by the fact that the applicants had initially included her as a beneficiary, her consent relinquishing her share ought to have been sought and/or filed in court. Further there was no evidence as to the fact that David Nthiga Njeru and one Robert Muriithi Njeru are indeed deceased.

12. For this reason, I decline to grant prayer no. 1 and order that the application herein be served upon all the persons interested in the estate herein. Further I order that evidence as to the death of the beneficiaries be produced by way of a further affidavit sworn by the applicants herein.

13. In relation, to prayer No. 2, I have indeed considered the application herein. I have further perused the court's record and I note that (just as the applicant's deposed), letters of administration was initially granted to one Anastacia Igoki on 24.06.2014. The said grant was confirmed on 3.12.2015 and a certificate of confirmation of grant issued and which is dated 14.12.2015. It is not in dispute that the said administrator passed on and that the court *vide* the orders of 19.12.2017 ordered that she be substituted. In the said ruling Hon. F. Muchemi J indeed noted that the death of the previous administrator (Anastacia) was not in dispute. The 1st applicant and the respondent herein proceeded to file the application dated 29.03.2018 seeking that they be appointed as administrators of the estate herein for the reasons the initial administrator had passed on and the estate as such had no administrator. The said application was allowed vide the orders of 10.07.2019 and thus new administrators were appointed. It is clear therefore that at the time of appointing the administrators herein, the initial administrator had already passed on and thus the reasons Hon. Muchemi J advised the applicants herein to file for substitution.

14. It is trite that where the sole administrator is a natural person, and he or she dies, the grant becomes useless or inoperative by reason of subsequent event of his demise. Such a grant becomes useless and inoperative through subsequent circumstances and can only be revoked under Section 76(e) of the Law of Succession Act. (See **Julia Mutune M'mboroki –vs- John Mugambi M'mboroki & 3 others [2016] eKLR**). The applicants under prayer 2 prayed that the said grant be revoked for the reasons that it has become useless and inoperative through subsequent circumstances (the said death). This court has powers to revoke a grant *sui moto* or on application upon being satisfied that the circumstances set out under Section 76 of the Act have been satisfied. In this matter, it is clear that the said grant is useless and inoperative. That being the case, the same can only be revoked and subsequently the certificate of confirmation of grant made to the said deceased administrator be set aside. As such, I find prayer 2 of the application merited.

15. As for prayer 3, the applicants sought for orders that the grant of letters of administration intestate (or with will annexed) made to Veronica Kere Mbindu, Janice Wanjiru Kamure and Cecilia Muthoni Kamuri in this matter on 10.07.2019 be confirmed. However, I have perused the records herein and I note that the applicants and the respondent after being issued with the grant proceeded to have the same confirmed. This confirmation was vide the orders of 15.10.2019. The applicants deposed (in paragraph 15 of the supporting affidavit) that they are requesting the court to confirm the grant issued on 10.07.2019 so that all the beneficiaries of the estate can inherit their rightful shares. However, it is my considered view that such an issue is covered under prayer 1 and which I have extensively considered. It is therefore clear that prayer 3 is unmerited and the same cannot be allowed.

16. As such, having considered the above, it is my considered view that the application succeeds in terms of prayers 2 only. I decline to grant

prayer 1 of the application and order that the application herein be served upon all the persons interested in the estate herein. Further I order that evidence as to the death of the beneficiaries be produced by way of a further affidavit sworn by the applicants herein. I decline prayer 3 for the reason that the same is unmerited. As to for the costs, this matter being a succession matter involving family members, each party to bear his or her own costs.

17. It is so ordered.

DELIVERED, DATED AND SIGNED AT EMBU THIS 21ST DAY OF OCTOBER, 2021

L. NJUGUNA

JUDGE

.....for the Applicants

.....for the Respondent