

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

MILIMANI LAW COURTS

FAMILY DIVISION

SUCCESSION CAUSE NO. 935 OF 2017

IN THE MATTER OF THE ESTATE OF ABDALLA JUMA KIBANDA – (DECEASED)

ASHRAF ABDU KASSIM.....APPLICANT

VERSUS

KARAR OMAR.....RESPONDENT

RULING

1. When on 24th July 2017 the respondent Karar Omar filed petition for the grant of letters of administration in respect of the estate of the deceased Abdalla Juma Kibanda he swore that he was the deceased's grandson and his only surviving heir. The estate comprised Plot No. C 5444 – Kayole; Plot No. LR No. 15397/36; Athi River – 1/43 undivided; share in Kilimani Plots of LR No. 8857/3; and LR No. 15397/36. The deceased had died intestate on 14th March 1995.

2. The grant was issued on 27th November 2017, and confirmed on 25th November 2019. The schedule of properties during confirmation comprised LR No. 15397/40 Athi River Daystar; LR No. 15397/42 Athi River Daystar; LR No. 15385/1 Athi River Daystar and Magongo Bomu Plot No. 1856. All the properties went to the respondent.

3. There is an application dated 19th February 2021 for the revocation and/or annulment of the grant. The applicant Ashraf Abdu Kassim stated that he was also deceased's grandson but the respondent had concealed this fact from the court and fraudulently proceeded to acquire the deceased's property alone. Secondly, the respondent had fraudulently failed to disclose to the court that the same estate had been the subject of Kadhi's Court **Succession Cause No. 22 of 2015** which had led to an appeal in the High Court, Family Division, **Civil Appeal No. 35 of 2017** which had not been heard and determined. The applicant filed a supporting affidavit and a further affidavit.

4. The applicant annexed several proceedings to show that the respondent was been a party in the various litigations relating to the estate of the deceased. In **HC Succession Cause No. 1790A/1995** the joint grant which had been issued to the respondent and Musa Ibrahim over the deceased's estate was revoked on 10th December 2001. Secondly, in Kadhi's Court **Succession Cause No. 94 of 1999** over the same estate, it was found that the respondent was not one of the heirs of the deceased. Then there is **Civil Appeal No. 35 of 2017** filed by the respondent against the applicant to challenge the findings of the Kadhi's Court. The appeal is pending.

5. It is clear that when the respondent filed the instant petition and obtained a grant which was subsequently confirmed, he deliberately and fraudulently concealed from the court the existence of all these proceedings in which he was a party. He was also aware that the applicant had made a claim to the estate. He did not care to inform the applicant, or seek his consent. All these were material facts that needed to be disclosed. Under **section 76 of the Law of Succession Act (Cap 160)** a grant whether or not confirmed, shall be revoked if it was fraudulently obtained by the non-disclosure of material information (**Matheka & Another –v- Matheka [2005]2KLR 455**). On the basis of the available evidence, I determine that the reason why the respondent quietly filed this petition was to alone inherit the entire estate of the deceased which he knew other persons, including the applicant, were laying a claim to. That was fraudulent.

6. In conclusion, I allow the application. The grant issued to the respondent on 27th November 2017 is hereby revoked and the certificate of confirmation issued on 25th November 2019 is set aside. Costs shall be borne by the respondent.

DATED AND DELIVERED AT NAIROBI THIS 19TH DAY OF OCTOBER, 2021.

A.O. MUCHELULE

JUDGE