



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MALINDI

MISC. SUCCESSION CAUSE NO. 14 OF 2020

IN THE MATTER OF THE ESTATE OF JUMWA KALUME KITSAUMBI BONIFACE KALAMA
BINGUMAAPPLICANT

VERSUS

KAHASO KARISA KAZUNGURESPONDENT

CORAM: Hon. Justice R. Nyakundi

K. Lughanje advocates for the applicant

Richard O. Advocates for the respondent

J U D G M E N T

On 22.10.2020, **Kahaso Karisa** was issued with grant of letters of administration to administer the intestate estate of **Jumwa Kalume Kitsaumbi** who died on 17.8.2016 at Shimo La Tewa whereas on being aggrieved with the making the grant of representation **Boniface Kalama Binguma** has petitioned the Court vide summons for revocation to have the grant issued be revoked or annulled. In support of the revocation are grounds on the face of the summons comprising of the following:

1. That the proceedings in the Malindi High Court Citation Cause No. 14 of 2020 vesting the grant of Letters of Administration intestate to the respondent were defective in nature and substance.
2. That the respondent procured the grant of letters of administration intestate through a deprivation of the applicant's constitutional and natural justice right to be heard despite entering appearance and objecting to the said citation.
3. That the applicants were not given any notice for inter parte hearing as such the proceedings were marred with substantive procedural flaws that render them futile.
4. That the respondent fraudulently obtained the grant through falsification and concealment of the existence of continuing trust and vested the entire estate to herself to the exclusion of all other rightful beneficiaries.
5. That the respondent's failure to disclose and accentuate the existence of a continuing trust was a critical and essential point of law because the grant of letters of administration intestate could not singularly issue to her as sole administratrix of the estate.
6. That the respondent failed to provide a true and accurate inventory of the assets of the deceased.
7. That the respondent failed to disclose the extant of a pending High Court matter vide Mombasa High Court Case No. 523 of 1999 between Jumwa Kalume Kitsaumbi versus James Njagi Njiiru which case implicates the deceased estate.
8. That six (6) months have lapsed since the grant was issued on the 22nd October 2020 and the respondent has been unable and or failed to produce to Court a full and accurate inventory of all the assets and liabilities of the estate and all dealings there within as strictly required by the law.
9. That the respondent has not, in the alternative sought any extension of time to comply with Section 76 (d), (iii) and 83 € of the Law of Succession Act.

10. That ultimately, the respondent has been unable and or has neglected and or failed to diligently administer the deceased estate.
11. That unless the application herein is heard and determined on a priority basis, the respondent shall proceed to regularly administer the entire estate rendering the applicant's application nugatory.
12. That the orders sought will not in any way prejudice the interests of the respondent as a beneficiary of the estate.
13. That it is only fair and just that the orders sought herein be granted.

In protest to the summons the grant bearer **Kahaso – Karisa** filed a replying affidavit citing the following grounds to challenge the revocation:

- (1). That I verily state that the applicant's affidavit in support of the summons for revocation of grant sworn on 13th August, 2021 (hereinafter referred to as "the applicant's affidavit") is full of falsehood and the same ought not to be believed.
- (2). That to begin with, the applicant is shamelessly lying before Court by deposing that he entered appearance on 22nd September, 2020 whereas it is evident from the face of the record that he only entered appearance on 28th October, 2020 long after the grant was issued.
- (3). That the applicant's documents were even received under protest by my advocates on record for having been filed way out of time and for being overtaken by events.
- (4). That in response to paragraph 8 of the applicant's affidavit, I have been advised by advocates on record which advice I verily believe to be true that the applicant was accorded a fair opportunity to be heard but failed to enter appearance on time. Thus, he cannot be allowed to benefit from his own indolence.
- (5). That in response to paragraphs 9, 10 and 11 of the applicant's affidavit, I verily state that I duly disclosed the existence of Adam Kahindi Karisa (deceased) and that he had left behind a spouse and 2 children in paragraph 3 (v) of my affidavit dated 25th August, 2020 in support of the citation herein.
- (6). That in response to paragraph 12 of the applicant's affidavit, I verily state that I have disclosed all beneficiaries of the deceased's estate in my affidavit in support of the citation and I annexed the area chief's letter confirming the heirs and the same was marked as Exhibit KKK-2 therein. It is mischievous for the applicant to allege fraud and non-disclosure of all the rightful beneficiaries yet he is relying on the same Chief's letter that I produced before this Court in my affidavit in support of the citation.
- (7). That in further response to paragraph 12 of the applicant's affidavit, I wish to state that the estate has not been distributed yet hence the allegation that I have vested the entire estate to myself is misplaced and practically impossible at this stage. The applicant is just trying to mislead the Court to have the grant revoked.
- (8). That the pending court case referred to in paragraph 14 of the applicant's affidavit is of no relevance to this matter and the applicant has not told the Court how the said case implicates the deceased's estate. In any case, one wonders how a 1999 matter would still be pending up to date.
- (9). That in response to paragraph 15 and 16 of the applicant's affidavit I verily state that I am still in the process of gathering information and ascertaining all the properties of the deceased, assets and liabilities so that I do not leave any property behind before I file the summons for confirmation of the grant together with the full inventory of the assets and liabilities of the deceased's estate.
- (10). That in doing so, I discovered that some properties of the deceased were fraudulently and unlawfully transferred to third parties at the detriment of the rightful heirs and I am in the process instituting court proceedings to recover some of those properties despite my lack of financial muscles.
- (11). That I have further discovered that the applicant has unlawfully and fraudulently transferred/registered some of the deceased's properties in his names one of which is Plot Number 3841 (Original Number 3839/2)/III/MN, CR 33336 which was unlawfully and purportedly transferred to the applicant in 2009.
- (12). That I know of my own knowledge that Plot Number 3841 (original number 3839/2)/III/MN, CR. 33336 is a subdivision of the larger parcel known as Plot Number 742/III/MN, CR. 18287 which was initially registered in our grandfather's name one Kalume Kitsaumbi and after his demise the same was transferred to the Public Trustee vide Mombasa High Court Succession Cause No. 165 of 1981 for onward transmission to the lawful heirs.
- (13). That the deceased, who was the 1st widow of our late grandfather Kalume Kitsaumbi got registered by transmission as proprietor of several resultant subdivisions of the larger Plot Number 742/III/MN, CR. 18287 one of which is Plot Number 3841 (Original number 3839/2)/III/MN, CR. 33336 and was holding the same as life tenant (life interest) on her behalf and on behalf of her children.

(14). That the deceased, who purportedly transferred Plot Number 3841 (Original Number 3839/2)/III/MN, CR. 33336 to the applicant inherited the same from our late grandfather Kalume Kitsaumbi.

(15). That I have been advised by my advocates on record which advice I verily believe to be true that the deceased was holding the portions of land transferred to her as life tenant (life interest) on behalf of her grandchildren and had no legal capacity to transfer the same to the applicant herein hence the applicant's title to Plot number 3841 (Original Number 3839/2)/III/MN, CR. 33336 ought to be declared null and void and the same ought to revert to the deceased's estate for distribution to the lawful heirs.

The advocates filed their respective submissions together with authorities for and against the revocation. I shall resolve the issue as to whether the grant should be revoked in the 1st place.

Resolution

It is not disputed that vide a citation filed by **Kahaso Karisa**, grant of letters of administration were issued by this Court on 22.10.2020. The applicant's claim that the respondent obtained the making of grant of administration through non disclosure of material facts, failing to notify the Court of continuing trust and further failure to seek consent from the beneficiaries of the deceased estate, the applicant invited the Court to be guided by the principles in the following authorities: **Samuel Wafula Wasike v Hudson Simiyu Wafula CA No. 161 of 1993, Re estate of Mariko Nyamu M'ibiri (Deceased) {2017} eKLR, Aviation & Airport Services Workers Union (K) v Kenya Airport Authority & Another {2014} eKLR, Ruaha Concrete Co. Ltd et al v Paramount Universal Bank Ltd et al, HCCC No. 430 of 2002, Kilima Limited & Another v Samuel Ruto – Chairman & 21 others; Carewell Farmers Company Limited & Another (Interested Parties) eKLR, Bahadurali Ebrahim Shamji v Al Noor Jamal & 2 others Civil Appeal No. 210 of 1997, Re Estate of David Kyuli Kaindi (Deceased) {2016} eKLR**

The Law on revocation is clearly set out under Section 76 of the Law of Succession Act. It expressly provides that a grant for letters of administration may be revoked for a petitioner obtaining the grant through defective proceedings, or obtained by fraudulent making of false representation, or by concealing from the Court something material to the making of the grant or that the impugned grant was obtained by means of an untrue allegations of facts essential in point of Law, or the petitioner through inadvertence left out some fundamental aspect of the estate to render the grant inoperative.

The words in the statute on revocation uses phrases like concealment, false representation, deceit, fraudulent etc. From **Blacks Law Dictionary 6th Edition**, the Learned Author defines fraud as:

“An intentional perversion of truth for purposes of inducing another in reliance upon it to part with some valuable thing belonging to him or to surrender a legal right. A false representation of a matter of fact, whether by words or by conduct by false or misleading allegations or by concealment of that which decisions and is intended to deceive another so that he shall act upon it to his legal injury.”

Regarding the application before me on perusal of the annexures and affidavit in support by **Kahaso**, there is evidence of lack of consent from other beneficiaries to the intestate estate. The citation ought to have satisfied the criteria of disclosure to all of the beneficiaries survived by the deceased. This was to ensure due inclusivity of every heir entitled of a right or interest in the estate.

In this case, after a careful consideration of the affidavit evidence, Section 76 of the Act ought to be invoked for purposes of revoking the grant of letters of administration issued on 22.10.2020. As a result, the same be and is hereby revoked. This Court as a consequences exercise jurisdiction under Section 66 of the Act to order that first grant of letters of administration be issued to **Boniface Kalama Binguma, Alice Kombo Kambi and Kahaso Karisa Kazungu** as the sole administrators to the intestate estate of **Jumwa – Kalume Kitsaumbi**.

The upshot being that summons for revocation be and is hereby allowed with no orders as to costs.

DATED, SIGNED AND DISPATCHED via email AT MALINDI THIS 24TH DAY OF DECEMBER 2021

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R. NYAKUNDI

JUDGE