



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

SUCCESSION CAUSE NO. 15 OF 2014

IN THE MATTER OF THE ESTATE OF NAHASHON

M'ITHIIRI M'KIAMBATI.....DECEASED

MORRIS EVANS MUTUMA.....APPLICANT

RULING

1. Mr. Morris Evans Mutuma, the applicant and son to the deceased has sought from court the substantive order that the grant issued herein on 4/6/2020 be revoked and to set aside the judgment delivered by the court on the same date and further that two joint administrators be removed from the administration and that he the applicant be appointed in their stead. He also seeks an order for accounts against the administrators.
2. The reasons in the affidavit advances to premise the application is that after the inconclusive judgment the administrators have demolished property on the estate and sold shares of the deceased without valid reason. The applicant also faults the judgment for being inconclusive for failure to order the mode of distribution the estate yet the same has been employed by the administrators/respondents to demolish a building upon the estate property and locked out the applicant from the land where his home is situate. He sees the destruction to be a design to make distribution of the estate less smooth. The affidavit then exhibits the judgment, photographs of a building said to have been demolished, certificate of search of the estate immovable property and a letter addressed to one said to have let one of the property of the estate pursuant to an agreement with the applicant and asking him to vacate.
3. The application was opposed and resisted by two respondents by the replying affidavit sworn on 27/9/2021. The affidavit accuses the applicant for peddling falsehood with a design to mislead the court into granting the orders sought when the same are unmerited. The two then assert having faithfully administered the estate and distributed it upto 85% in accordance with the judgment which the applicant has refused to come to terms with. Having been the initial administrator who was removed by the court for failure to diligently administer the estate, they term the applicant as unfit to administer the estate being contended with strangers to meddle with the estate. The sale of the property known as **NKUENE/MITUNGUU/KITHINU/2097** was admitted to have been done in order to raise the necessary administration expenses. The affidavit then exhibited documents to evidence that a beneficiary accused of wasting the estate by the applicant was dead before the judgments, mutation forms and certificates of search, lease agreement done behind the administrators and other correspondence to show the hurdles placed upon their pathway by the applicant.
4. Pursuant to the directions by the court parties filed and exchanged submissions on the application. The submissions by the administrator were filed on the 22/10/2021 while those by the 2nd objector were filed on the 25/10/2021. Of note is the fact that even though the applicant sought leave to file a supplementary affidavit and was present when directions were given for filing submissions, neither supplementary affidavit nor submissions were filed. That failure however does not stop the court from determining the application by the basis and merits of material presented.
5. Now as said before, the substantive prayer is that the grant be revoked and the joint administrators removed so that the applicant Morris Evans Mutuma is appointed the sole administrator. There was also a prayer that the administrator be ordered to render accounts in respect of the estate. The ground put forth in support of the application that the administrators have started demolishing structures standing on the estate land and have also disposed and alienated all the shares of the estate without regard to the beneficiaries.
6. From the onset, disposal of any asset of the estate contrary to the confirmed grant would be nothing less than intermeddling and abdication of duty of the administrator. It is not a light matter and thus cannot be made without evidence to support same. It is also a matter that goes to accounts to be rendered at the completion of administration.
7. However, the grounds upon which a grant may be revoked or annulled are well settled and stipulated under section 5 of the Act. The stipulation provides -:

“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.

8. I see the application not to satisfy any of the grounds for revocation or annulment of grant. I have the learning that one must place himself within the statutory parameters before the court can grant to him an order of revocation. One does that by setting out the ground then proving some by evidence. Here none of the ground has been alleged and no evidence has been led to prove such grounds. To the contrary, the administrator and objector have demonstrated that the administration is almost complete and what remains to be done has not been done due to bottlenecks placed on their pathway by the applicant. When notice is taken of the fact that the applicant was an administrator who was removed for failure to diligently move with administration the charge against him that he is not keen to have the administration concluded may not be idle. On the basis that there is no ground established and proved to justify revocation or annulment, I find no reason to grant the order but find that the application is unmerited.

9. On prayer that the administrators render accounts of the estate, I find that to be the statutory duty of every administrator. Under section 83 (9) of the Act the law demands that full and accurate accounts be rendered within six months of the confirmation of grant or such longer period as the court may determine.

10. In this matter, the administration is not complete and I consider it premature to order the rendering of accounts just now. However, the duty is upon the administrator to conclude and complete the administration within a reasonable time. I therefore direct and order that the administration to be concluded with five months from today by transmission of all the untransmitted shares of the beneficiaries. The matter shall thus be mentioned in court on the 31/5/2022 to confirm compliance.

11. Owing to the view I take that there was no justification at all to bring the application and that it was never propelled by any good faith, I consider this one of those situations that the costs incurred so far be met by the applicant as the unsuccessful party. I award the costs of the application to the petitioners and the objectors and assess the same at Kshs. 30,000 to be shared equally between them. The costs be paid within 30 days from today and in default execution shall issue.

DATED AND DELIVERED VIRTUALLY VIA MICROSOFT TEAMS THIS 21ST DAY OF DECEMBER, 2021

PATRICK J.O OTIENO

JUDGE

In presence of

Mr. Nyamu Nyaga for objector and hold brief for the administrators.

No appearance for Mutegi for applicant/Objector

PATRICK J.O OTIENO

JUDGE