



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

FAMILY DIVISION

SUCCESSION CAUSE NO. 3006 OF 2002

IN THE MATTER OF THE ESTATE OF DAVID MUCHIRI NYOTA (DECEASED)

RULING

1. The Application coming for determination in this Ruling is dated 23.8.2019 seeking the following orders:

(i) THAT the orders made on 5.3.2018 closing this file be reviewed and the file be re-opened (allowed by Consent on 7.10.2019).

(ii) THAT the grant made to PETER KAMAU NYOTA (now deceased) and PETER MWAURA MUCHIRI on 13.11.2003 be revoked.

(iii) THAT the Court appoints new administrators to complete the process of administration.

(iv) THAT the Costs of the Application be provided for

2. The Application is supported by the Affidavit of the Applicant DAVID MUCHIRI NYOTA in which he stated that the Administrator PETER MWAURA MUCHIRI has not taken any step to administer the estate after the 1st Administrator PETER KAMAU NYOTA.

3. The Respondent PETER MWAURA MUCHIRI filed a Replying Affidavit dated 2.10.2019 in which he stated that there was intermeddling with the Estate which necessitated him to file Nairobi ELC Case No. 314/2011 and the process of distribution was stalled awaiting the determination of the said intermeddling issue.

4. I have considered the submission filed by both parties herein. I find that it is not in dispute that the Respondent PETER MWAURA MUCHIRI is the only surviving Administrator of the Estate herein after the demise of his co-administrator PETER KAMAU NYOTA (Deceased).

5. There is also no dispute that the two were issued with grant of letters of administration on 13.11.2003.

6. The said grant has not been confirmed to date and the applicant is seeking revocation of the said grant on the basis that the surviving Administrator has failed to take action.

7. I find that it is not in dispute that the surviving administrator has filed Nairobi ELC case No. 314 of 2011 due to intermeddling in the estate.

8. The grounds for revocation of grant are contained in **section 76** of the Law of Succession Act as follows:

'76 Revocation or annulment of grant 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

e. has produced any such inventory or account which is false in any material particular; or that the grant has become useless and inoperative through subsequent circumstances.

9. In the Current case, I find that the Respondent alleges intermeddling with the estate. **Section 45** of the Law of Succession Act provides as follows on the issue of intermeddling.....

‘ No intermeddling with property of deceased person (1) Except so far as expressly authorized by this Act, or by any other written law, or by a grant of representation under this Act, no person shall, for any purpose, take possession or dispose of, or otherwise intermeddle with, any free property of a deceased person. (2) Any person who contravenes the provisions of this section shall— (a) be guilty of an offence and liable to a fine not exceeding ten thousand shillings or to a term of imprisonment not exceeding one year or to both such fine and imprisonment; and (b) be answerable to the rightful executor or administrator, to the extent of the assets with which he has intermeddled after deducting any payments made in the due course of administration.’

10. It is trite law that only the Administrator has authority to deal with the property of the estate.

11. It is also trite law that before confirmation of grant no landed property can be sold.

12. In the Current case, there is no evidence that the administrator has sold part of the estate. There is also no confirmation of grant and no leave of the court sell land and therefore whatever transactions that have taken place are null and void.

13. Revoking the grant is not a solution as there were intervening factors which delayed the distribution of the estate.

14. I direct that the administrators file a Summons for Confirmation within 30 days of this date.

15. Mention on 27.4.2020 for confirmation of grant.

16. All the beneficiaries to appear in Court for confirmation.

DELIVERED, SIGNED AND DATED IN OPEN COURT THIS 6TH DAY OF MARCH, 2020

ASENATH ONGERI

JUDGE OF THE HIGH COURT OF KENYA, NAIROBI.