



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

FAMILY DIVISION

SUCCESSION CAUSE NO. 537 OF 2004

IN THE MATTER OF THE ESTATE OF JARED GITAU GICHUHI (DECEASED)

AND IN THE MATTER OF AN APPLICATION BY NIXON MBURU GICHUHI

NIXON MBURU GICHUHI.....APPLICANT

V E R S U S

PAULINE WANJIKU KAMAU.....1ST RESPONDENT

EDWIN KAMARI GICHUHI.....2ND RESPONDENT

HELLEN WANJUHI GICHUHI.....3RD RESPONDENT

ROBINSON N. GICHUHI.....4TH RESPONDENT

EDWARD MBURU GICHUHI.....5TH RESPONDENT

RULING

1. The deceased herein died intestate on 28th September 2003 leaving behind as survivors a widow by the name of Eddah Njeri Gichuhi and children namely; Robinson Ngethe Gichuhi (son), Pauline Wanjiku Gichuhi (daughter), Edwin Kamari Gichuhi (son), Hellen Wanjiku Gichuhi (daughter), Nixon Mburu Gichuhi (son) and Edward Mburu Gichuhi (son).

2. On 1st March 2004, Eddah Njeri Gichuhi petitioned this court for a grant of representation. According to form p&A5, the assets listed as comprising the estate include;

(i) Dagoretti/Thogoto/1493 and 1494 each worth Kshs. 500,000/-, motor vehicle Reg. No. KZV 590 worth Kshs. 200,000/- and household chattels worth Kshs. 100,000/-.

3. Subsequently, a grant of letters of administration was issued to the petitioner on 26th April 2004. With the consent of all beneficiaries, the said grant was confirmed on 26th January 2009. The estate devolved entirely to the petitioner (widow).

4. Unfortunately, the petitioner died on 13th April 2011 before the said properties would fully devolve into her name (see Death Certificate S/No. 035145 annexure NMG-4 in support of application or revocation of grant).

5. Consequently, Nixon Mburu Gichuhi a son to the deceased and also a beneficiary to the estate filed Summons dated 13th May 2019 against the other beneficiaries seeking revocation and or annulment of grant under Section 76(e) of the Law of Succession Act, Cap 160, Rule 44 and 73 of the P&A Rules on grounds that the grant issued to the deceased; petitioner/administratrix now deceased has become inoperative and useless that a grant of representation to the deceased's estate be issued to the applicant and, the Honourable Court do direct fresh distribution of the deceased's estate.

6. The application is premised upon grounds stated on the face of it and an affidavit sworn on 13th May 2019 by the applicant. In his affidavit, the applicant basically gave the historical background of the proceedings as analyzed herein above and contended that the petitioner having died before the administration of the estate could be completed, there is need to revoke the grant and replace the deceased administratrix and then re-distribute the undistributed part of the estate afresh to the children (beneficiaries). In particular, the applicant

made reference to L.R. Dagoretti/Thogoto/1494 which is still in the deceased's name as evidenced by a copy of the title and search annexed as NMG-5.

7. In response, Pauline Wanjiku one of the beneficiaries filed a replying affidavit sworn on 1st October 2019 on her behalf and with authority from the other respondents/beneficiaries. Pauline admitted the factual historical aspect of the case. According to Pauline, upon confirmation of the grant, the estate of their father entirely devolved to their mother/administratrix .

8. That the estate having devolved to their mother, there was nothing remaining in their father's estate for redistribution. She averred that, after their mother the sole administratrix died, they agreed as a family to file a Succession Cause in respect of her (their mother) estate.

9. Subsequently, they as children to the deceased including the applicant herein signed a consent dated 20th April 2018 (see annexure PWK 3) authorizing Pauline Wanjiku to Petition for a grant of representation in respect of the estate of their mother. In the petition for grant of representation dated 20th April 2018 lodged at Kikuyu Law Courts in respect of the estate of Eddah Njeri Gichuhi, L.R. Dagoretti/Thogoto/1494 was listed as the sole asset for distribution.

10. That a grant of letters of administration was issued to her as the sole administratrix on 5th February 2019. It is her contention that, issuing a grant of representation to the applicant in respect of their father's estate would, in essence, result into having two administrators for the same estate which would cause confusion.

11. She further stated that, sometime in the year 2018, with the concurrence of all beneficiaries, she had filed an application for revocation of grant similar to the one now before court but the same was not heard because the court file had been de-activated. She attached copy of the said application dated 20th April 2018 and filed on 8th May 2019 (see annexure PWK 6).

12. She further averred that for the applicant to have filed the instant application after the file re-appeared without consulting them portrays an act of bad faith. She asserted that the applicant having written a letter seeking to withdraw the application herein cannot be heard again to proceed with the hearing of the same.

13. During the hearing, the respondents did not turn up despite service of the hearing notice having been served upon their counsel Eboso and Co. Advocates. Consequently, the matter proceeded exparte.

14. Mr. Mbugua appearing for the applicant literally relied on the averments contained in the affidavit in support. Counsel submitted that there cannot be two succession causes in respect of one estate. He contended that the estate of the deceased herein has not been administered to completion hence it was wrong to commence a parallel succession cause in the name of a deceased administrator who had not assumed ownership of the deceased's property. Counsel urged the court to revoke the grant and appoint the applicant to complete administration of the estate.

15. I have considered the application herein seeking revocation of the grant. The relevant provision governing revocation of a grant is Section 76 of the Law of Succession and for purposes of this case paragraph e which provides for revocation of a grant on account that the grant has become useless and inoperative through subsequent circumstances.

16. In the instant case, the sole administrator of the estate herein died before completing administration of the estate. This is evident from a copy of Search of L.R. Dagoretti/Thogoto/1494 dated 17th October 2018 (NMG-5) attached to the affidavit in support of the application. It then follows that, by 13th April 2011 when Eddah Njeri the sole administratrix died, she had not fully assumed possession of L.R. Dagoretti/Thogoto/1494 hence left part of the estate unadministered. The implication of that scenario is that, the administratrix died before administering the estate to completion thus rendering the grant useless and inoperative.

17. Having left the business of administration of the estate uncompleted, legally, the natural cause of action to follow is by replacing Eddah Njeri with one or more administrators not exceeding four to complete the administration of the estate.

18. It is on that understanding and correctly so, that the respondent herein Pauline Wanjiku moved to this court vide an application dated 20th April 2018 seeking revocation of grant on similar grounds just like the instant application. It was after the original court file disappeared that all beneficiaries opted to file a Succession Cause in respect of their mother at Kikuyu Law Courts being Succession Cause No. 144/2018 seeking to distribute the same estate. Instead of applying for reconstruction of the file to enable them prosecute their application for revocation of grant, they took a different approach to achieve the same result through filing a succession cause in the name of the deceased administratrix.

19. Since the original file was traced and the applicant having filed a similar application, there are two applications pending seeking similar orders for revocation. Although the applicant in the application dated 13th May 2019 did not comment much on Pauline's earlier application for revocation dated 20th April 2018, the court has the discretion in the interest of justice to consider the two applications together to achieve the same result.

20. The power to revoke a grant is a matter of discretion of the trial court. This position is clearly captured under Section 66 of the Law of Succession Act which provides;

“When a deceased person has died intestate, the court shall, save as otherwise expressly provided, have a final discretion as to the person or persons to whom a grant of letters of administration shall, in the best interest of all concerned, be made, but shall, without prejudice to that discretion, accept as a general guide the following order of preference-

(a) Surviving spouse, spouses, with or without association of other beneficiaries,

(b) Other beneficiaries entitled on intestacy, with priority according to their respective beneficial interests as provided by part v;

(c) The Public Trustee; and

(d) Creditors.”

21. Courts have time and again upheld the discretionary authority bestowed upon a court of law to use its discretion to arrive at a just decision when dealing with revocation of grants. In the case of Albert Imbuga Kisigwa v Recho Kawai Kisigwa Succession Cause No. 158/2000 the court held that;

“The power to revoke a grant is a discretionary power that must be exercised judiciously and only on sound grounds. It is not a discretion to be exercised whimsically or capriciously.”

See also In Re Estate of K.K (Deceased) (2017)eKLR and Matheka and another vs Matheka (2005)I EA 251 and Nyaga Cottolengo Francis v Pius Mwaniki Karani (2017)eKLR where the Court of Appeal at paragraph 19 stated in part that:-

“More importantly, Section 76 of the Act gives the court very wide powers on revocation or annulment of grants, “whether or not confirmed” and “may at any time” revoke or annul them “on application by any interested party or of its own motion”.

22. The sole administratrix having died, any beneficiary or beneficiaries not exceeding four can move the court for a grant of letters of administration de bonis non. This category of letters of administration provided under the 5th Schedule of the Law of Succession can only issue for purposes of completing administration of estates in situations where the previous administrator has failed to complete administration of the estate for whatever reason. The expression whatever reason include death of a sole administrator. In the case of In the matter of the estate of Peris Wanjiku Nduati (Deceased) Nairobi High Court Succession Cause No. 2349/2001 Justice Angawa had this to say:-

“Where an administrator dies before completion of administration, the right course of action should be to seek his replacement through an application for grant of administration de bonis non”.

23. It is clear from the pleadings of both parties that L.R. Dagoretti/Thogoto/1494 has not fully devolved to any beneficiary. It remains unadministered to date. The deceased administratrix had not acquired title for her to have free will to dispose of the same in her own capacity as envisaged under Section 3 of the Law of Succession Act. In other words, the deceased administratrix had not acquired the right to dispose of the property even if she had lived until execution of the transfer into her name.

24. Having not completed the administration process, the property still is regarded as the deceased’s property to be redistributed afresh in place of the deceased sole beneficiary. The property therefore is not free property capable of distribution in the name of the deceased administratrix’s estate pursuant to Section 3 of the Law of Succession.

25. Ideally, the property herein should not have been listed under the estate of Eddah Njeri now pending before Kikuyu Law Courts. The fact that the original file in this case went missing is not a ground to commence another succession cause in the name of a person who had not acquired possession of an asset from another succession cause.

26. Having held as above, it is my holding that, the sole administratrix having died leaving part of the estate unadministered, and further using this court’s wide discretion, the applications dated 13th May 2019 and 20th April 2018 are allowed with orders that;

(a) The grant issued to the deceased herein on 26th April 2004 and confirmed on 26th January 2009 is hereby revoked on account of being in-operative and useless.

(b) In place of the deceased administratrix, and applying this court’s discretion, Pauline Wanjiku Kamau and Nixon Mburu Gichuhi are hereby appointed as joint administrators for purposes of completing administration of the remaining part of the estate.

(c) The appointed administrators in consultation with the other beneficiaries to agree on how to redistribute the remaining property i.e L.R. Dagoretti/Thogoto/1494 and file a consent on the agreed mode of re-distribution within thirty (30) days.

(d) In the event they are not able to agree, any one of them can move the court with the consent of all beneficiaries to re-distribute the said property.

(e) Each party to bear own costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 30TH DAY OF JUNE 2020.

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J. N. ONYIEGO

JUDGE