REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

SUCCESSION CAUSE NO. 171 OF 2007

(IN THE MATTER OF THE ESTATE OF LUKA KANYIRI RUITHIBU ALIAS WAMBUGU S/O MUYA (DECEASED)

TERESIAH NJOKI MBUGU.....APPLICANT

-VERSUS-

ANDREA RUITHIBU KANYIRI.....RESPONDENT

JUDGMENT

The deceased in this cause died intestate in September 1975. On 18 September 2007, the respondent petitioned for Grant of letters of administration of his intestate estate. He described himself in the petition as a son of the deceased. Apart from himself, he also named the following as having survived the deceased.

1. Baptista Mukere Kanyiri

2. Grace Wangui Wanyiri

3. Njoki Mbugu

He described these people as the deceased's son and daughters-in-law respectively. The only asset listed as comprising the deceased's estate is land referred to as **Title No. Muhito/Mbiuni/531.**

The applicant filed an objection to the making of the grant on 3 October 2007. However, the record shows that both the applicant and the respondent were appointed by this honourable court as joint administrators of the deceased's estate on 13 October 2008 pending the publication of the petition in government gazette.

The notice for the petition was subsequently published on 25 November 2008 and the grant made on 30 January 2009.

The record shows that by a summons for confirmation of grant dated 4th November 2008, the respondent sought to have the grant confirmed. The summons was filed in court on 10 November 2008; I found this to be a bit intriguing because it was seeking to confirm a grant that was yet to be made.

Be that as it may, the respondent reiterated in the affidavit in support of the summons that the deceased was survived by two sons and two daughters-in-law. He named the sons as himself and Baptista Mukere Kanyiri. The daughters-in-law were named as Grace Wangui Warui and the applicant.

As far as the distribution of the estate was concerned, he proposed to give one Francis Wachiuri Ruithibu 0.8 acres as a 'gift' from himself. The remaining three beneficiaries were allocated 1.066 acres each. The grant was confirmed in those terms on 9 October, 2009.

By a summons in general form dated 23 May 2011, one Francis Wachiuri Ruithibu sought to have the deputy registrar execute the transmission documents because, so he urged, the applicant in the present application had declined to sign those documents and complete the administration of the estate. In the affidavit in support of the summons, he swore that, Andrea Ruithibu Kanyiri, the co-administrator, and who is also named as the respondent in this summons, had passed away on 11 July 2009.

Prior to the determination of this application of 23 May 2011, the present applicant filed her own application dated 9 November 2012 on 12 November 2012 seeking to set aside the order made on 9 October 2009 confirming the grant on the ground that the same was "irregularly,

fraudulently and unlawfully" obtained.

She also sought to have the same grant confirmed in terms proposed by the applicant herself. When the application came up for hearing on 11 July 2014, her learned counsel is recorded to have informed the court that the resolution of that application would determine all other pending applications which must have included the application of 23 May 2011.

By a ruling delivered by this honourable court (Mativo,J.) on 25 July 2016, the application was dismissed.

Following the dismissal, the applicant filed yet another application by way of summons for revocation or annulment of grant under section 76 of the Law of Succession Act, cap.160. She specifically sought for the revocation or annulment of the grant made to her jointly with the late Ruithibu R. Kanyiri on 30 January, 2009. The summons was based on the grounds that the proceedings to obtain the grant were defective and that the grant was obtained fraudulently by making of a false statement and by concealment from the court something material to the case. The other ground was that the grant was obtained by means of untrue allegation of a fact essential in point of law to justify the grant.

It is this particular summons dated 1 December 2016 that is the subject of this judgment.

No affidavit or any sort of response was filed in reply to the summons and I suppose this was obviously because the person named as the respondent died, as earlier noted, in July2009. It is for the same reason that no evidence was called on the respondent's behalf when the summons came up for hearing. Nonetheless, the deceased's learned counsel filed submissions at the conclusion of the trial.

In his ruling on the applicant's earlier application my brother Mativo, J. made some fundamental findings that, in my humble opinion, have a bearing to the fate of the applicant's summons; and for this reason I can do no better than reproduce some of the excerpts of that decision as far as they are relevant to the question at hand.

> **"Andrea Ruithibu R. Kanyiri one of the co-administrators died on 11th July 2009 and this prompted the applicant herein to file the application dated 12th February 2015 seeking orders inter alia to substitute the name of the deceased administrator. The said application is still pending in court. Mr. Kamata, counsel for the applicant insisted on proceeding with the present application arguing that its determination will equally determine the other applications pending in this cause. It is also important to point out that, the person who was proposed to be substituted died on 31.12.2013**.

On the fate of the grant in the wake of the co-administrator's death, the learned judge stated as follows:

> **Having determined that the procedures set out in the act applies (sic) to these proceedings, I proceed to determine the issues raised in the application before me, namely, <u>what is the effect of the death of a co-administrator</u>. Justice W. Musyoka, in discussing a similar issue in the matter of the estate of Edward Kanyiri Kunyiha (Deceased) had this to say: -**
>
> > **"Regarding the death of the co-administrator, the position is that the grant...has become inoperative. The grant was made jointly to the applicant and his mother who has now died. It was intended that the two act together in the administration of the estate. A grant is a certificate. It is issued to a particular person or persons. If the holder of the grant dies the grant becomes useless as it cannot be transferred to another person. If it was made to two persons and one dies it becomes inoperative. Under section 76 of the Law of Succession Act such a grant is liable to revocation. It should be revoked and another Grant made."**

While associating himself with these pronouncements, the learned judge continued:

> **"I fully associate myself with the sentiments expressed by the learned judge in the above cited decisions and maintain that the death of Andrea Ruithibu R. Kanyiri rendered the grant issued on 9th of October 2009 inoperative within the meaning of section 76 of the act and on that basis alone the prayers sought in this application cannot be granted.**
>
> **The grounds relied upon by the applicant in prayer one are that the orders confirming the grant be <u>set aside</u> because they were obtained irregularly, fraudulently and unlawfully <u>especially in the part on the mode of distribution.</u> A reading at section 76 of the act shows that it has no provision for setting aside, but the grounds upon which a grant can be revoked or annulled are statutory as enumerated in the said section and it is incumbent upon any party making an application for revocation or annulment of grant to demonstrate the existence of any, some or all the grounds stated the grounds(sic). A close look at section 76 shows that the grounds can be divided into three categories: - the first two deal mainly with the propriety of the grant-making process. I find nothing in the application before me to suggest that the grant-making process was improper. The other grounds in the said section deal mainly with maladministration i.e. personal representatives have not been effective in administration. This has not been alleged at all in this application."**

For better understanding of the categories into which the learned judge grouped the grounds for revocation or annulment of grant, it is necessary that I reproduce the entire section here; it reads 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—**
>
> **<u>(a) that the proceedings to obtain the grant were defective in substance;</u>**

(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. (emphasis added)

The first two grounds which the learned judge referred to are no doubt grounds (a) and (b) and in his respectable view, there was nothing in this cause to suggest that the grant-making process was improper as to flout any of these two grounds.

Having so found, there would no basis for this court to regurgitate and interrogate afresh the means by which the grant was obtained. And this is true not just for the first two grounds but also for ground (c) which, borrowing the learned judge's words, also deals with “the propriety of the grant-making process”. In other words, if the learned judge held that there was nothing to suggest that the grant-making process was improper there would be no basis for me to invoke section 76 (c) and question the grant on the basis that that the it was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant.

That aside, for the reasons given in his ruling, the learned judge held that the grant was inoperative. This holding, in my humble view, put to rest the legal status of the grant in issue and does not warrant any further intervention by this court.

So, the short answer to the applicant’ summons is that if at all she was, for any reason, aggrieved by the ruling of this honourable court delivered on 25 July,2016, the appropriate cause for her would have been to appeal against it. She certainly cannot invite this court to effectively exercise its appellate jurisdiction over its own decisions under the guise of section 76 of the Law of Succession Act.

Ultimately, I find the applicant’s summons misconceived and an abuse of the due process of the court. It is dismissed but I make no orders as to costs.

Dated, signed and delivered on 19 June 2020.

Ngaah Jairus

JUDGE