



REPUBLIC OF KENYA

IN THE HIGH OF KENYA AT NAKURU

SUCCESSION CAUSE NO 2 OF 2014

IN THE MATTER OF THE ESTATE OF DEDAN NDIRI WAMBUGU

RAKERI WANGECI NDERITU.....1ST APPLICANT

JULIUS NJUGUNA.....2ND APPLICANT

VERSUS

LUCY WANJIKU.....RESPONDENT

RULING

1. This a ruling on objector's application dated **14th August 2019**. It seeks to **revoke Grant of Letters of Administration** issued in this case on 27th June 2016 and confirmed on 2nd February 2018. Grounds on the face of the application are that the Grant was obtained by false statement of facts and concealment of material facts that ought to have been disclosed; that no consent was obtained from the applicants or from beneficiaries to the estate; that the applicants are administrators of the estate of the deceased having been appointed in Eldoret Succession Cause Number 410 of 2013.

2. This application proceeded by way of written submissions. They respondent failed to file submissions nor attend Court despite being represented by counsel.

SUBMISSIONS BY APPLICANTS

3. Counsel for the applicants submitted that the respondent failed to disclose there was ongoing succession proceedings in Eldoret High Court in Succession Cause Number 410 of 2013 which was confirmed on 8th April 2019 and issued on 19th May, 2014; and the whole estate has been distributed in Eldoret.

4. Counsel for the application further submitted that the name of the deceased was deliberately misspelt to create confusion to prevent the applicant from discovering that there was another succession cause filed and further the names of the beneficiaries were not disclosed.

5. Counsel submitted that this is an abuse of the court process and urged this Court to revoke the grant issued on 27th June 2016 and confirmed on 2nd February 2018.

6. The respondent failed to file any response to the application herein. The respondent failed to attend Court for hearing nor file submissions despite adjournments being granted to allow the respondent file submissions or appear through her Advocate to submit on the application herein.

ANALYSIS AND DETERMINATION

7. Record show that the respondent filed citation on 19th February 2014 followed by an application dated 2nd April 2014 seeking to restrain the applicant herein from evicting the citor/respondent from LR No. Bahati/Kabatini Block 1/223

8. I note that the chief's letter dated 12th April 2013 indicate the applicant herein as the widow of the deceased and the respondent/citor as a sister to the deceased.

9. Thereafter the respondent applied for Letters of Administration in the same file and sought confirmation of grant by summons dated 4th April 2016. The grant was confirmed on 2nd February 2018.

10. From the chief's letter dated 12th April 2013, there is no doubt that the applicant is the widow of the deceased. It is evident that the said widow never participated in the succession cause herein and the whole parcel of land LR No. Bahati/Kabatini Block1/223 allocated to the respondent and she owned it via transmission. Permanent restraining order was issued against the applicant vide ruling delivered by **Justice Ndungu** on 20th June 2019. I however note that there is no participation of the applicant in the application seeking restraining orders.

11. I note from paragraph 11 of the affidavit in support of application herein, the applicant listed herself as the widow of the deceased **Nderitu Wambugu** and 10 beneficiaries; she averred that she has never been served with Court papers in this cause including citation and all affidavits filed in this cause are based on lies.

12. She further averred in paragraph 11 it appears the respondent filed citation long after they had filed Succession Cause No. 410 of 2013 in Eldoret High Court.; and that she had full knowledge of the succession cause but chose to conceal the material facts. She annexed Kenya Gazette Notice Number 2561 dated 11th April 2014 and copy of Grant issued on 19th May 2014.

13. I note that the chief's letter dated 12th April 2013 was filed in this cause by the respondent and she has listed the applicant as widow of the deceased but she has not featured anywhere in the confirmation. There is no indication of allocation of the deceased's property to the applicant nor the other beneficiaries listed in the chief's letter filed by the respondent; further from the documents annexed to the applicant's application, the succession cause was filed before this matter. The cause was filed in 2013 while the citations dated 23rd January 2014, the grant issued on 27th June 2016 and confirmation 2nd February 2018. It is evident that at the time the respondent was filing citation, the applicant had filed succession cause in Eldoret. It is not clear when the respondent filed succession cause as the succession process continued with citation number and file; however, it is clear that at the time grant was issued to respondent in 2016, the applicant had been issued grant in 2014.

14. In my view, the respondent herein failed to disclose material facts to the Court. I see merit in the application herein and do allow accordingly.

15. **FINAL ORDERS**

1. Application dated 14th August 2019 is hereby allowed.
2. Grant issued to respondent on 27th June 2016 and confirmed on 2nd February 2018 is hereby revoked.
3. Costs to the applicant.

Ruling dated, signed and delivered via zoom at Nakuru This 29th day of October 2020

RACHEL NGETICH

JUDGE

In the presence of:

Jeniffer - Court Assistant

No Appearance by parties