



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 1115 OF 1993

IN THE MATTER OF THE ESTATE OF JOSEPH JOHN KARANJA (DECEASED)

RULING

1. Before me are two applications, for my consideration and delivery of a ruling. The first application is a Summons for revocation of grant dated 9th June 2014 brought by Christopher Kimani Karanja a dependent and beneficiary of the estate filed under Section 76, 83 and 94 of the Law of Succession Act, and Rules 44, 49 and 73 of the Probate and Administration Rules seeking several orders, two of which have been spent as follows –

1. *(Spent)*

2. *(Spent)*

3. *That the grant of representation made to Edward Mukundi Karanja and Veronica Wanjiku Karanja on 16th September 2008 be revoked.*

4. *That the current administrators do provide within 14 days of issuance of this order a full and accurate inventory and statement of accounts from the date of confirmation.*

5. *That the administrators be personally surcharged for any misapplied funds or assets.*

6. *That further and pursuant to the grant of prayer 3 above this honourable court do appoint an administrator manager independent of the beneficiaries and dependents herein to manage and distribute the estate in terms of the settlement agreement dated 8th June 2009.*

7. *That further and/or in the alternative to the foregoing this honourable court to issue orders as is necessary to preserve and complete the distribution of the estate in terms of the settlement agreement dated 8th June 2009.*

8. *That costs of this application be provided for.*

2. The second application is a Summons dated 15th July 2014 brought by the two administrators against David Kuria under Section 45 and 47 of the Law of Succession Act (Cap. 160) and Rules 49, 63 and 73 of the Probate and Administration Rules and Order 45 of the Civil Procedure Rules 2010, seeking orders that –

1. *This honourable court be pleased to order and/or compel the respondent, his agents or servants to immediately release, surrender and produce deed plans and all title documents in respect of the following properties –*

a) *LR No. 2259/44 – Karen*

b) *LR No. S.74 Kangemi*

c) *LR No. Kang/Dag/221*

Forming part of the estate of the late Joseph John Karanja (deceased).

2. *That this application be mentioned on 16th July 2014 together with summons application dated 9th June 2014 which is scheduled for mention for direction on the date aforesaid. (now spent)*

3. That the orders of the honourable court be complied with within seven (7) days of the making thereof in default of which criminal proceedings do issue against David Kuria in line with Section 45 of the Law of Succession Act.

4. That costs of the application be provided for.

3. Both applications were responded to by way of replying affidavits and further affidavits raising various issues, and both applications proceeded by way of filing and highlighting written submissions. In this regard, Makori and Karimi Advocates for Christopher Kimani Karanja a beneficiary and applicant in the application dated 9th June, 2014 filed their submissions on 23rd April 2019, while M/s Amolo & Gachoka Advocates for David Kuria the respondent in the second application filed their written submissions on 31st July 2019.

4. Though M/s Wamae & Allen for the two administrators who were the applicants in the second application dated 15th July 2014 filed submissions dated 6th August 2019, the said submissions were mainly in respect of an application dated 24th April 2019 for review of the court's orders issued on 20th July 2018 which application is not for decision before me today. According to the court record also, the hearing of that application has to await a decision pending in the Environment and Land Court, and there is no suggestion that that court has delivered a decision on the same.

5. In the oral highlights Mr. Makori for Christopher Karanja relied on the written submissions filed on 23rd April, 2019 and Section 76 of the Law of Succession Act (Cap. 160) and said that his client was seeking revocation of grant of letters of administration issued in 2008, as well as other consequential orders. Counsel submitted that the present administrators were appointed after the initial grant of letters of administration were revoked and thereafter, the court ordered the beneficiaries to negotiate a settlement, which was done and signed by all beneficiaries. However, the administrators had failed to complete the administration of the estate thus necessitating the present application. Counsel urged the court to grant the orders sought in his client's application.

6. Mr. Kigata for the administrators on his part, submitted that though it was true that Justice Rawal had nullified the initial grant of letters of administration and appointed the present administrators, the said administrators had not failed to administer the estate as alleged. Counsel stated that the applicant for revocation of grant was a lone ranger and that the matter was *res judicata*. Counsel relied on their written submissions and urged the court to dismiss the application for revocation of grant and allow his clients application filed against David Kuria for release of documents to the administrators.

7. Mr. Chege for David Kuria on his part, submitted that his client did not oppose Christopher Kimani Karanja's application dated 9th June, 2014 for revocation of grant, but opposed the administrators' application dated 15th July, 2014 seeking documents from his client. He relied on their written submissions dated 31st July, 2019.

8. I have considered the two applications, documents filed and the submissions of counsel for the parties, both written and oral. I will deal with the applications one after another.

9. The first application dated 9th June 2014 is principally for revocation of grant. Such applications are governed by the provisions of Section 76 of the Law of Succession Act (Cap. 160). There are many reasons listed under the Act on which this court can revoke a grant of letters of administration. The Section provides as follows –

“76. 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 orders or allows; 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.”

10. In my understanding in requesting for revocation, the applicant Christopher Kimani Karanja is saying that the administrators have failed to administer the estate and give an accurate account, which falls under Section 76(d)(ii) and (iii) of the Law of Succession Act. Those are his allegations or grounds to justify his application.

11. In accordance with the provisions of Section 109 of the Evidence Act (Cap. 80), the burden was on the applicant to demonstrate to this court proof of the grounds relied upon. This being a civil matter, the standard of proof is on the balance of probabilities. Did the applicant discharge his burden of proof?

12. To satisfy the requirements of proof above, in my considered opinion, this being a matter which involves a number of beneficiaries, and the statutory requirement of consents in succession matters, the applicant should have demonstrated to this court whether the other beneficiaries supported him, and if not what the reasons for not supporting him were. He should have also demonstrated the particulars of the defaults of the administrator, and whether he had given them notice before filing the application as required under Section 76 of the Act. He has not done so, thus in my view he has not demonstrated to the required standards that the administrators have failed to administer the estate without reasonable cause. Since the applicant has not proved his grounds to the required standard, this court cannot thus exercise its jurisdiction to revoke the grant of letters of administration herein, and the application fails on that account and has to be dismissed in total as the other prayers can only arise on revocation of grant.

13. The second application dated 15th July 2014 is by the administrators requesting this court to compel the respondent David Kuria to release documents and titles of listed properties of the estate to the administrators. The reasons for the request for release of the documents are given in the application. On his part, the respondent opposes the application on the ground that he does not have the alleged title documents, and that in any case he is prepared to release the title documents which he has to the court. He contends that, in terms of the settlement agreement, he was appointed as distributor of the estate.

14. Having considered the arguments on both sides, I have to state that the responsibilities of administrators of deceased person's estate are clearly defined under the Law of Succession Act (Cap. 160) – Sections 79 through to Section 95. The administrators have many responsibilities including being responsible for identifying assets, liabilities and beneficiaries of the estate, paying any debts of the estate, and distributing the net assets of the estate to the beneficiaries.

15. If indeed, David Kuria was appointed the distributor of the estate, he is presumed to have the documents and has to explain why if he did not have the said land title documents to date, he has not so far complained, since the said assets were listed in the settlement agreement. In any case, David Kuria as distributor of the estate is still accountable to the administrators, and in my view, the Law of Succession Act would require that he has to hand over title documents to the administrators, unless the court orders otherwise. No such court order has been brought to my attention, thus he cannot say that he cannot release the sought for documents to the administrators.

16. With regard to his proposal that the title documents he holds be submitted to court, in my view, the court is not the most appropriate custodian of valuable documents like titles. The court can take custody of such documents only in very exceptional circumstances, and this is not such an exceptional circumstance to warrant such an order, as taking into account that such documents could easily get misplaced in the court and cause undue hardship to interested parties. With those findings, the application by the administrator will thus succeed.

17. To conclude, I dismiss the first application, dated 9th June 2014 by Christopher Kimani Karanja, and allow the application by the administrators dated 15th July, 2014. The orders of this court on the two applications are as follows -

(i) The application dated 9th June 2014 for revocation of grant is hereby dismissed in its entirety.

(ii) The application dated 15th July 2014 by the administrators is allowed and the respondent therein David Kuria is ordered to release/surrender and produce within 14 days from today all deed plans and all title documents in respect of the following properties forming part of the estate of Joseph John Karanja (*deceased*) to the administrators, that is –

a) LR No. 2259/44 – Karen

b) LR No. S. 74 Kangemi

c) LR No. Kang/Dag/221

(iii) In case of default by David Kuria to comply with (ii) above, the administrators are at liberty to move the court for appropriate orders against him.

(iv) As this is a family matter, parties will bear their respective costs for the two applications.

Dated and delivered this 26th day of October, 2020.

George Dulu

JUDGE

Delivered virtually due to the COVID-19 pandemic and the Ministry of Health regulations.

The Deputy Registrar will transmit the Ruling electronically to parties/counsel, subject to payment of applicable charges.