



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

SUCCESSION CAUSE NO. 242 OF 2003

IN THE ESTATE OF M'RIMBERIA M'IKIRIMA – (DECEASED)

JENIFFER MUKAMI M'RIMBERIA.....1ST PETITIONER

GERALD MURANGIRI RIMBERIA.....2ND PETITIONER

VERSUS

MARICELA MWENDWA.....1ST INTERESTED PARTY

BEATRICE KATHURE.....2ND INTERESTED PARTY

FLORENCE KAIRUTHI.....3RD INTERESTED PARTY

RULING

1. Before me is summons for revocation of grant dated 16/6/2020. The significant orders sought in the application are: (1) Revocation or annulment of grant and (2) inhibition upon LR. No. NYAKI/CHUGU/310; (3) In the alternative, the applicant to be appointed a co-administrator.
2. The application is premised upon grounds set out in the application, the supporting affidavit and supplementary affidavit. The major arguments are:
 - a) That the applicants are daughters of the deceased.
 - b) That the petitioners are their mother and brother respectively.
 - c) That the grant was obtained secretly, unprocedurally, fraudulently, and without their consent.
 - d) That the grant was obtained through means of untrue allegations that since the applicants were married, they were not entitled to inherit their father's estate.
 - e) That they were disinherited simply because they are daughters.
 - f) That applicants failed in their objection because they did not have legal representation.
 - g) That the estate should be preserved
 - h) That no provision of law that bars parties from applying for revocation of grant even if the grant has been confirmed.
 - i) That at no time did they renounce or relinquish their right to inheritance.
 - j) That no record that shows that they attended or were involved in these proceedings, thus, distribution of the estate is contrary to Rule 40 (8) of the Probate and Administration Rules.

k) That the judgment clearly shows that only members of the 1st house as well as the widow (Respondent) proposed to disinherit the applicants.

l) That the Judgment also show that only brothers consulted over the distribution of the estate.

m) That in the interest of justice the grant should be revoked.

3. The Respondent, Gerald Murangiri Rimberia opposed the application and filed a replying affidavit as well as submissions. His main points of opposition are:

1) That the family members, have never desired to have the estate distributed.

2) That the matter was settled through judgment by Emukule, J delivered on 23/5/2008 and no appeal was preferred against the said judgment.

3) That whereas was attempted into application dated 30/6/2009 by applicant's brother in vain.

4) That their mother Jeniffer, the 2nd Petitioner also attempted to seek review of judgment herein vide application dated 3/11/2010 in vein. She again tried to change distribution as had been ordered by Emukule, J in vein before application was dismissed.

5) They also made another application dated 29/10/2019 but withdrew it.

6) Based on the foregoing, the application for revocation is *res judicata*.

7) That the present application is in a conclusion away the applicant and their business to frustrate distribution of the estate.

8) That under section 7 of the Civil Procedure Act. This matter is *res judicata*.

9) That their mother Jeniffer represents the house of the applicant.

10) That the 3rd applicant cannot be appointed an administrator since that house is represented.

ANALYSIS AND DETERMINATION

4. The Penultimate decision will be whether the grant herein should be revoked or not. Nonetheless, I should discuss and determine:

a) whether application for revocation is *res judicata*

b) whether the 3rd applicant should be appointed co-administrator

c) whether the applicants were disinherited simply because they were daughters.

d) whether the grant was obtained fraudulently, secretly, or through means of untrue allegations.

Appointment of a Co-administrator

5. I will begin with this point for it is straight forward. In ordinary circumstances, one administrator is sufficient. However, the court may appoint more than one administrator in the best interest of all beneficiaries. Some of the situations provided in law where the court is obligated to appoint more than one administrator include; where there is a resulting trust; or more than one house. See section 58 and 84 of the Law of Succession Act. In this case, there are two houses and each house is represented. Jeniffer represents the 2nd house. I have not been shown of any necessity to appoint another person to represent the 2nd house. I reject the request.

Res Judicata

6. According to section 76 of the Law of Succession Act;

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-

7. The words used in section 76 of the law of succession Act are; *a grant of representation, whether or not confirmed may at any time be revoked*. Accordingly, the grant of representation may be revoked anytime whether confirmed or not. Therefore, existence of a judgment confirming the grant does not bar an application for revocation of grant from being made. I am not also aware of any provisions in the law of Succession which prevents a party from applying for revocation of grant because he failed on a review application. The two remedies are different and are attended to by different legal thresholds. But it all depends on the circumstances of the case and the nature of claims presented before and determined by the court. The application should therefore be determined on merit as shall be directed later.

Revocation

8. Reasons for seeking revocation of grant as postulated by the applicants are:

1. They were disinherited because they are women – daughters of the deceased.
2. That they did not give their consent to the filing of petition and confirmation of grant herein.
3. The grant was obtained fraudulently and by means of untrue allegations.

9. I have perused the record and noted that, the three applicants were listed as children of the deceased. I did not find the consent form by them. However, I do note from the record that their brother Julius as well as their mother Jeniffer have attempted on several occasions to apply in court in the name of the three applicants. The court noted these ominous tendencies. See court's lamentations in the ruling by Emukhule J. dated 9th April 2009. The good judge even posed a question why these daughters have not themselves staked a claim in the matter? I note also that discrimination of the three daughters in inheritance also featured prominently in the ruling by Lesiit J dated 11th February, 2011. It seems the instant application has been made by the three daughters. But, given the turn of events in this case, I find it prudent that the applicants should appear in person before the judge who will preside over this matter for purposes of identification and ascertainment of any other issue that the judge may deem fit. This is out of abundance of caution necessitated by the events in these proceedings. In the upshot, I remit the file back to Meru for consideration by the presiding judge of the application for revocation of grant after the preliminary matters I have pointed out have been resolved. It is so ordered.

Dated, signed and delivered at Narok through Teams this 23rd day of November 2020

F. GIKONYO

JUDGE