



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MACHAKOS

Coram: D. K. Kemei – J

SUCCESSION CAUSE NO. 676 of 2009

IN THE MATTER OF THE ESTATE OF ANNA MBEKE MUNG'UTI (DECEASED)

NZOMO MUNGUTI.....OBJECTOR/APPLICANT

VERSUS

VERONICA KAMENE MUTUA...../ RESPONDENT

RULING

1. Before me for determination are two applications. The first application is vide summons for revocation of grant dated 3.8.2018 that is brought by Nzomo Munguti who is stated to be a beneficiary of the estate of the deceased who died on 21.11.1994 in which the following orders are sought;

a) That the grant of Letters of Administration made to MUTUA MUNGUTI MAKAU on 18.11.2009 and confirmed on 19.11.2013 be revoked and/ or annulled.

b) That fresh grant of letters of administration be reissued to NZOMO MUNGUTI the applicant who is a legal beneficiary/administrator of the estate of the late ANN MBEKE MUNGUTI.

c) That the list of schedule be amended to read as follows:

| NAME | DESCRIPTION | SHARE OF HEIRS |
|----------------------|--|--|
| NZOMO MUNGUTI | -Plot Nos 49, 417, 418 and 416 at Kaloleni Market, Machakos -Share No 623 at Katelembo Athiani Muputi FCS Ltd -Machakos Town Block 3/1149 | To be registered in the names of NZOMO MUNGUTI to hold in trust for himself and all the beneficiaries at equal shares |

d) That the costs of this application be provided for.

2. The Application is premised on the grounds that the proceedings to obtain the temporary grant issued on 18.11.2009 and confirmed on 19.11.2013 were defective and fraudulent; that it was obtained by means of an untrue allegation that the applicant was deceased yet he was alive and further that the fact that Plot 50 is a public utility was concealed. The application is supported by an affidavit deponed on 3.8.2018 by Nzomo Munguti who averred that the deceased was his mother who died on 21.8.1994. It was averred that the petitioner was issued a grant and yet the said petitioner failed to disclose that the deponent was alive. It was averred that the schedule of distribution left out some of the family members who are beneficiaries of the estate of the deceased; that Plot 50 is a public utility and did not form part of the estate of the deceased. It was averred that Plot Nos 49, 417, 418 and 416 at Kaloleni Market, Machakos, Share no 623 Katelembo Athiani Muputi Farmers Co Ltd and Machakos Town Block 3/1149 ought to be shared equally among Mutua Munguti Makau, Nzomo Munguti and Emma Ndunge Kaisa who are the legal beneficiaries of the estate of the deceased. It was averred that Boniface Kyalo Muthwale was a stranger and not a beneficiary of the deceased's estate. It was his contention that the grant that was issued was flawed.

3. There is a 2nd undated application that is indicated as a summons for rectification of grant filed on 12.10.2018 by Nzomo Munguti who is stated to be the surviving administrator of the estate of the deceased. The following orders are sought;

a) That the certificate of confirmation of grant issued to MUTUA MUNGUTI MAKAU be rectified to substitute the deceased administrator with NZOMO MUNGUTI.

b) The grant be confirmed as rectified and the administrator be registered as the legal administrator of the estate of the late ANNA MBEKE MUNGUTI.

c) That the list of schedule be amended to read as follows

| NAME | DESCRIPTION | SHARE OF HEIRS |
|---------------|---|---|
| Nzomo Munguti | -Plot Nos 49, 417, 418 and 416 at Kaloleni Market, Machakos -Share No 623 at Katelembo Athiani Muputi FCS Ltd -Machakos Town Block 3/1149 | To be registered in the names of NZOMO MUNGUTI to hold in trust for himself and all the beneficiaries at equal shares |

d) That the costs of this application be provided for.

4. The application was supported by an undated affidavit deponed by Nzomo Munguti who averred that the other beneficiaries had accorded their consent for the substitution of Mutua Munguti Makau with Nzomo Munguti.

5. By replying affidavit deponed on 15.8.2019, the respondent opposed both applications. She averred that the grant that was issued to Mutua Munguti Makau became useless by operation of the law when the said administrator died on 4.7.2016 as per the death certificate VKM1. It was averred that the application was overtaken by events and that the court could not revoke a grant that was not in existence. It was pointed out that the grant was issued to the deponent and confirmed on 15.11.2017 as evidenced by VKM2 and further that the interests of the applicant had been catered for hence it would be an academic exercise to revoke a grant. In respect of the 2nd application it was averred that the same had been overtaken by events as the grant had already been reissued and confirmed.

6. Directions were issued to the effect that the applications be canvassed vide written submissions. It is only the respondent's submissions that are record.

7. In their submissions dated 25.9.2019, counsel for the respondent pointed out that the property of the deceased is held in trust and therefore the same is safe. Counsel placed reliance on the case of **Re Estate of John Mulwa Nzioki (Deceased) (2020) eKLR** in submitting that the objector is a brother to the deceased administrator and it would not be in the interest of any beneficiary to revoke the grant. It was pointed out that the original administrator died on 4.7.2016 and hence the original grant is not in existence for purposes of revocation.

8. The record shows that Mutua Munguti Makau was the original administrator of the estate of the deceased and he later passed on and which led to a rectified grant that was issued to Veronica Kamene Mutua. This meant that the original grant mentioned by the applicant does not exist.

9. The issues for determination are as follows;

a. Whether the application has merit.

b. What orders the court may make?

10. In addressing the first issue, the procedure for seeking the relief of rectification is set out in Rule 43 (1), which echoes **Section 74** of the Law of Succession Act. Rule 43(1) says: -

“Where the holder of a grant seeks pursuant to the provisions of Section 74 of the Act rectification of an error in the grant as to the names or descriptions of any person or thing or as to time or place of the death of the deceased or, in the case of a limited grant, the purpose for which the grant was made.....”

11. The import of the section is that rectification of grants is limited to three instances, to wit; **errors in names and descriptions of persons or things; errors as to time or place of death of the deceased; and in cases of a limited grant, the purpose for which such limited grant is made.**

12. In the matter of the **estate of Geoffrey Kinuthia Nyamwinga (deceased) [2013] eKLR** the court stated;

“The law on rectification or alteration of grants is section 74 of the Law of Succession Act and Rule 43 of the Probate and Administration Rules..... What these provisions mean is that errors may be rectified by the court where they relate

to names or descriptions, or setting out of the time or place of the deceased's death. The effect is that the power to order rectification is limited to those situations, and therefore the power given to the court by these provisions is not general.....

13. The applicant in his affidavit has not pointed out to court the errors in names and descriptions of persons or things; errors as to time or place of death of the deceased. In the absence of such proof, the 2nd application must fail. In any case the grant the applicant is talking about no longer exists as the administrator had long died and replaced as well as a new grant issued.

14. The first application seeks to invoke section 76 of the Law of Succession Act. Section 76 makes provision for revocation of grants of representation on various grounds as follows-

“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 just 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.”

15. The applicant's case is that the deceased petitioner was issued a grant and yet he failed to disclose that the applicant was alive. It was averred that the schedule of distribution left out some of the family members who are beneficiaries of the estate of the deceased; that Plot 50 is a public utility and did not form part of the estate of the deceased. I find that the evidence to that effect was not presented to this court by the applicant. I am not convinced that a case is made out for revocation of a grant under section 76. The record reveals that the original administrator in this cause is the one who is deceased and was replaced by the respondent. Nowhere in the evidence on record that the applicant is alleged to have died. The applicant himself did not avail such evidence. It is possible that the applicant might have confused the issues. This means that the prayers sought in the application will serve no useful purpose. Again, it would cause prejudice to the respondent and the beneficiaries if the grant is revoked on the basis of rumours which have not been substantiated. In any event, the respondent and her counsel have indicated that the applicant had duly signed the consent to the making of a grant as well as the rectification of the grant and that the issue of the applicant's demise was a typographical error and regrettable. The respondent went ahead to aver that the properties of the deceased are to be held in trust and his interest and the other beneficiaries is well catered for. It would appear to me that the applicant is only out to vex the respondent and to flex his muscles. I am satisfied that no good grounds have been given by the applicant to justify revocation of the grant. The respondent is indicated as holding the assets in trust which role the applicant wants to perform. There is really no need to bring changes when the applicant has not even laid any tangible accusations against the respondent. The application dated 3.8.2018 must fail.

16. In the result I find no merit in the applications dated 3.8.2018 and 12.10.2018. Consequently, they are dismissed with no order as to costs.

It is so ordered.

Dated and delivered at **Machakos** this **18th** day of **November, 2020**.

D. K. Kemei

Judge