



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KAKAMEGA

SUCCESSION CAUSE NO. 190 OF 2008

IN THE MATTER OF THE ESTATE OF CHAPURUKHA TIETIE (DECEASED)

RULING

1. The application for determination is dated 9th July 2010, seeking revocation of the grant of letters of administration intestate issued to administrator, and confirmed on the 15th October 2012. The application is premised on grounds that the grant had been obtained through misrepresentation and that the administrators had not involved the applicant being one of the children of deceased, in the process. The applicant argues that he is one of the children of the deceased, and that he was not included in the distribution of the estate at confirmation of the grant. He stated that he has been disinherited, and that he would like the whole process to be set aside so as to start afresh.

2. This cause was filed in 2008, by the applicant and one Jack Chapurukha. The grant of letters of administration intestate made on the 15th July 2008. On the 17th November 2008, the respondents herein filed an application, dated 14th November 2008, for revocation of grant made on 15th July 2008 to the applicant herein, on the basis that they had been left out of the succession, yet they were beneficiaries. The matter proceeded way of *viva voce*, and the court recorded testimonies from both the applicants and respondents herein, and a ruling was delivered on 20th September 2012. The court revoked grant made to the applicant herein, and made a fresh grant to the respondents, and distributed the estate in the manner proposed by the respondents. The applicant was dissatisfied with the distribution approved by the court, and made an attempt to appeal, but he never filed appeal, and he now says he faced time constraints.

3. Revocation of grants is provided for in section 76 of the Law of Succession Act, Cap 160, Laws of Kenya, which provides 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 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 has ordered or allowed; 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.”

4. In *Jesse Karaya Gatimu vs. Mary Wanjiku Githinji* [2014] eKLR, the court said

“The grounds upon which a grant may be revoked or annulled are thus statutory 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 of these grounds, whatever the case may be.”

5. The Court of Appeal, in *Matheka and Another vs. Matheka* (2005) 2 KLR 455, laid down the following guiding principles:

“i. A grant may be revoked either by application by an interested party or by the court on its own motion.

ii. Even when the revocation is by the court upon its own motion, there must be evidence that the proceedings to obtain the grant were defective in substance, or that the grant was obtained fraudulently by the making of a false statement or by concealment of something material to the case or that the grant was obtained by means of untrue allegation of facts essential in point of law or that the person named in the grant has failed to apply for confirmation or to proceed diligently with the administration of the estate.”

6. The Court of Appeal affirmed this position in *Joyce Ngima Njeru & Another vs. Ann Wambeti Njue* [2012] eKLR, where it held:

“The central core of the ingredients required to be established under section 76 of the L.S.A. is that it is meant to be used as a vehicle to attack and fault the process of either obtaining the Grant or in active use of the Grant after being lawfully obtained in circumstances where it has become useless. It is not meant to fault the decision on the merits.”

7. From the court records, it is clear that the applicant herein fully participated in the hearing of the revocation and the confirmation proceedings. He was aware, and had in fact been given an opportunity by the court, when he testified, and presented his case in court, on how the estate ought to have been distributed. The court, during the said hearing, accorded all the parties a chance to be heard, and the matters raised in those applications were heard and determined by the court. The applicant herein has not met the grounds to warrant annulment and revocation of grant, as prescribed by law, and the same ought not to be granted. Further, the applicant is dissatisfied with the mode of distribution, and about the making of the grant or the manner of administration, which are the proper basis for revocation.

8. In *In Re Estate of Mburu Gitau (deceased)* [2002] eKLR, the court stated as follows:

“Distribution of the estate comes during the proceedings to confirm the relevant grant and a party dissatisfied with the distribution may not necessarily be dissatisfied with the grant of letters of administration and vice versa. That being the position, it becomes unreasonable for a person dissatisfied with the distribution of the estate only to proceed to ask for the revocation of annulment of the grant which, as in this case, has nothing wrong.

While Section 76 of the Law of Succession Act should therefore be relied upon to revoke or annul a grant it is not proper to use the same section where the objector is challenging the distribution only. There are relevant provisions to be used for that purpose and section 76 is not one of them.”

9. In *Agnes Mutitu Mwaura & 2 others vs. Jane Njoki Gachoki* [2015] eKLR, the court said:

“The respondent has made submissions that the applicants summons for revocation of grant issued at the lower court is an afterthought and that the points raised in their submissions can only be canvassed on appeal. This contention raises an important point of law which need to be addressed by this court. It is true that the applicants filed protest which was heard and determined on merit. Being dissatisfied with the outcome of the protest, the applicant filed a notice of intention to appeal dated 9th October 2009, but appears to have abandoned the option to appeal when they filed the summons now before court on 29th October 2009. In the summons for revocation of grant, the applicants have also prayed under prayer 2 for review, alteration and/or setting aside of the decision of the court delivered on 16th September 2009. The question that begs answers is whether this court can be asked to exercise its appellate jurisdiction under Section 76 Law of Succession Act because basically that is what the applicants are asking this court to do. This court in my view can only exercise its appellate jurisdiction when sitting on an appeal. If the Senior Resident Magistrate’s Court erred in applying the law as submitted by the applicants, then the right forum was an appeal as indicated from the notice of appeal filed by the applicants. This court can only be moved to revoke a grant of representation issued to a party on the grounds provided under Section 76 of Law of Succession Act. A party who is dissatisfied with the distribution of an estate of a deceased person by a court upon hearing all the parties on the same subject of dispute can only appeal. It will be an abuse of due court process if a party is allowed to reopen the same subject for determination again in order to have a second bite on the subject. Litigation must come to an end.

The applicants herein were clearly dissatisfied with the decision of the Senior Resident Magistrate’s Court on distribution of the estate that is why they filed notice of appeal and the summons for revocation of grant herein. However, I can exercise my appellate jurisdiction only when the jurisdiction is invoked which can only be done through an appeal. It will be an abuse of court process as I have said if the applicants are allowed to invoke my appellate jurisdiction through summons for revocation of grant under Section 76 of Law of Succession Act.”

10. In the instant cause, it is clear that the applicant was dissatisfied with the manner in which the court distributed the estate, and for the orders sought herein to be granted, it would mean that this court would sit on appeal on its decision. It is my finding and holding, that this application is an utter abuse of the court process, and the same ought to be dismissed.

11. In an upshot, the application dated 9th July 2010 is hereby dismissed. Each party shall bear their own costs.

DELIVERED, DATED AND SIGNED IN OPEN COURT AT KAKAMEGA THIS 18th DAY OF December,2020

W MUSYOKA

JUDGE