



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MARSABIT

SUCCESSION CAUSE 01 OF 2018

IN THE MATTER OF THE ESTATE OF SABIR SHEIKH SAID (DECEASED)

KASSIM OSMAN SHEIKH SAIDAPPLICANT

VERSUS

ABDUBAKAR SABIR SHEIKH SAIDRESPONDENT

RULING

The late Shabir Sheikh Said died on 19th July, 1998. Abubakar Sabir Sheikh Said applied for Letters of Administration intestate and a grant was issued to him in his capacity as the deceased's son on 7th May, 2018. The grant was subsequently confirmed on 11th December, 2018.

In his application dated 13th February, 2019 the applicant seeks the following orders:-

1. That the grant of letters of administration issued to the respondent herein on 7th May 2018 be revoked and or annulled.
2. That cost be provided for.

The application is made on the following grounds:-

- (a) That the grant was obtained fraudulently by the making of a false statement and by concealment of material fact from the court.*
- (b) That the respondents have failed and or refused to produce to the court a complete and accurate account of their dealings in respect to the estate of the deceased since issuance and subsequent grant of administration.*
- (c) That the grant has become useless and inoperative through the respondents conduct.*
- (d) That the pecuniary worth and extent of the estate of the deceased is within the jurisdiction of his honourable court, the grant was irregularly issued without knowledge and consent of the applicant.*

The application is supported by the applicant's affidavit sworn on 13th February, 2019. Parties by consent were to file written submissions but no one complied with that consent. The respondents filed a replying affidavit sworn by the Petitioner on 28th March, 2019.

The application herein raises the issue as to whether the letters of administration issued to the Petitioner should be revoked. The application is brought under Sections 47 and 76 of the Law of Succession Act as well as under Rules 44(1) 49 and 73 of the Probate and Administration Rules.

Section 47 of Chapter 160 gives the High Court the jurisdiction to entertain applications involving disputes under the Act. **Section 76 of Cap 160** states 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 to produce to the court within the time prescribed, any such inventory or account or 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.

Rule 44 of the Probate and Administration rules operationalizes section 76 of the Act. It requires that any person interested in a deceased's estate may seek the revocation or annulment of a grant. Rule 73 gives the Court inherent powers to make any orders necessary for purposes of enhancing the ends of Justice and to prevent abuse of the Court process.

The applicant maintains that he is a nephew to the deceased. His position is that even the petitioners are nephews and nieces to the deceased. It is also contended that the respondents fraudulently registered plot number 43 Moyale Township as plot number 211 and included it to be part of the deceased's estate. According to the applicant, the concerned plot is registered in the name of Tahir Sheikh Said. The plot is not part of the deceased's estate. The applicant also states that the respondent has not given complete and accurate accounts of the dealings of the estate as required by the law.

On their part the respondents maintain that they are the deceased's children. The applicant is not a beneficiary to the estate and cannot seek the revocation of the grant. The applicant is not the deceased's dependant or heir. The applicant falls under the 3rd class of heirs under the law of Succession Act. The applicant filed Meru ELC case number 195 of 2017 in relation to plot number 43, Moyale. The suit is still pending.

Section 76 of the Law of Succession Act provides for the parameters of nullifying a grant. The application is brought on the basis that the grant was obtained fraudulently by making false statement and concealment of material fact, that the grant was issued irregularly without the knowledge and consent of the applicant and that the petitioner has failed to render accurate accounts on the estate.

The petition seeking letters of administration was filed on 25th January 2018. The affidavit in support of the petition at paragraph (iv) gives the deceased's beneficiaries as follows:-

1. Abade Mwinyi Omari	0073851	Widow
2. Said Sabir Sheikh	0634439	Son
3. Sadia Sabir S.Said	8734836	Daughter
4. Ahmed Sabir Sheikh Said	11503634	Son
5. Salima Sabir Sheikh Said	20140863	Daughter
6. Ali Sabir Sheikh Said	23358060	Son
7. Aisha Sabir Sheikh Said	24580439	Daughter
8. Abubakar Sabir Sheikh Said	23358050	Son
9. Omar Sabir Said	12430020	Son

The record shows that the Chief, Marsabit township location wrote a letter on 2nd May 2017 indicating the deceased's beneficiaries. The applicant is not indicated as one of the beneficiaries. The beneficiaries include the deceased's widows, sons and daughters. The applicant contends that the respondents are nephews and nieces to the deceased. The chief's letter captures the beneficiaries' names quite correctly and all of them have the deceased's name as their father with the exception of the widow. If the respondents are not the deceased's widow and children, the applicant is at liberty to report to the Police to the effect that the area chief and the respondents are not the deceased's children and gave false information to the Court. Given the information on record, I am satisfied that the respondents are the proper beneficiaries of the deceased and they did not need the applicant's consent before filing the petition. I do equally find that the applicant does not qualify to be the deceased's dependent under Section 29 of the Law of Succession Act.

The other issue involves the ownership of plot number 43 Moyale town also described as plot number 211. It is also described as plot

number 235 as per paragraph 5 of the plaint before the Meru ELC Court. While applying for the letters of administration the petitioner annexed an allotment letter dated 2nd March 1999 for plot number 235 Moyale. The allotment is in favour of the deceased Sabir Sheikh Said. There is a letter from the Ministry of lands and Physical planning dated 15th June, 2017 indicating that the proprietor of the plot is Sabir Sheikh said.

Since there is evidence that the deceased owned the property and this court properly included the plot as part of the deceased's estate and now that the applicant has filed a suit before the Meru ELC Court, I do find that the contention that the plot belongs to another person cannot be the basis of nullification of the grant. The applicant is not contending that he is the owner of the plot.

The respondents applied to this court for letter of administration intestate and were issued with a grant. There is no fraud proved. There is no fraud or misrepresentation of facts on the part of the respondents. The grant was duly confirmed. The respondent is not the deceased's dependant and cannot call for statement of accounts. The applicant has no enforceable interest on the deceased's estate.

The upshot is that the application dated 13th February, 2019 lacks merit and is hereby dismissed with costs to the respondents.

Dated, Signed and Delivered at Marsabit this 19th June, 2019

S. CHITEMBWE

JUDGE