



**REPUBLIC OF KENYA**

**IN THE HIGH COURT AT ELDORET**

**MISC APPL. NO. 33 OF 2018**

**ELIZABETH JEMUTAI KANDIE..... 1<sup>ST</sup> PLAINTIFF**

**VERSUS**

**VIOLET JEPTUM RAHEDI .....1<sup>ST</sup> RESPONDENT**

**GEOFREY KIPCHUMBA KOSGEY ..... 2<sup>ND</sup> RESPONDENT**

**PHILOMENA KAPKORI ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

1. The applicant filed this application under the Notice of Motion seeking for orders:-

- a. That the grant of Letters of Administration intestate issued to the Respondents herein on 20/2/2017 and confirmed on 1/2/2018 be revoked and/or annulled.
- b. That the process of perfecting the confirmed grant in terms of sub division, transferring, collecting, receiving monies held at various bank accounts, deceased's pension and other benefits be stayed pending the hearing and determination of the application herein.
- c. That the Respondents be restrained from intermeddling with the estate of the deceased.

2. The application is based on the grounds that the proceedings to obtain the grant were defective in substance as the applicant who is the legal wife of the deceased together with her children, were excluded as beneficiaries/dependants.

3. Secondly, that the respondents are siblings to the deceased hence knew the rightful dependants and failed to disclose them in accordance with Section 26 of the Succession Act.

4. Also, that the grant has been obtained fraudulently by making of false statements and by concealment from the court of material facts that were extremely crucial to the cause.

5. Lastly, that the deceased property is likely to be wasted, alienated and/or intermeddled with, to the detriment of the applicant (widow) together with her children.

6. In her affidavit in support of the summons for revocation of the grant, the applicant stated that the deceased died intestate and left behind the following as his dependants.

- a. Elizabeth Jemutai Kandie            -widow
- b. Rono Kimut Rono                   -son
- c. Dan Chelelgo Rono               -son
- d. Rose Jekoech Birech           -widow(deceased)
- e. Kimut Rono Juniour               -son

- f. Kigen Rono                                 -son
- g. Jebet Rono                                 -son
- h. Bruno Rono                                 -son

7. The deceased also left behind several properties forming part of his estate which are in use by the respondents, namely :-

- a. L.R. No. Baringo/Sabatia/80
- b. L.R. No. Sergoit/ Elgeyo Marakwet block 3/2
- c. Plot at Kipkorgot
- d. Motor vehicle Reg. No. KBK 515W Toyota Harrier
- e. Motor vehicle Reg. No. KAM 248N Nissan Datsun
- f. Pension/death benefit/gratuity of over 5,000,000/=

8. That when her husband died, the 1<sup>st</sup> respondent who is her sister in law ganged up and worked in cahoots with other relatives to block her from participating in the funeral and burial arrangement, and secretly applied for letters of administration without including her and her kids, and without obtaining her consent in filing the succession cause.

9. That her right to be the administrator over the estate of her deceased's husband's estate is ranked higher than that of the respondents.

10. That the administrators intentions are clearly meant to defraud and disinherit the other beneficiaries to the estate of the deceased since she secretly made the application in court as a lone ranger.

11. Lastly, that the estate of the deceased, beneficiaries and the dependants of the deceased, to whom these proceedings relates stands to suffer great loss and will be prejudiced in the event that the prayers sought are not granted.

12. In their submissions, the applicants stated that the process of obtaining the letters of administration and later the confirmed grant was done in secrecy and was obtained from court through material non-disclosure.

13. It was brought to the attention of the court that the applicant together with her two children were intentionally excluded and even their existence denied.

14. The applicant has demonstrated that her children and those of the late Rose Jepkoech Birech are the rightful heirs through the birth certificates, affidavit of marriage and letter from the area chief, as well as the information on the eulogy.

15. Further, that it can be for the reason which is to conceal the true dependants of the deceased estate and disinherit them. This is evident from the confirmed grant when the deceased's siblings chose to selfishly consider themselves and not the rightful heirs of the deceased estate.

16. Lastly, that the applicant and her children never waived their right hence the respondent could have only obtained the grant through non-disclosure of material facts to the detriment of the rightful beneficiaries.

17. The circumstances in which a grant may be revoked or annulled are set out in Section 76 of the Law of Succession Act as follows:

**76 Revocation or annulment of grant 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 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.

18. Issues for determination are whether:-

(a) 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; or

(c) 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.

19. The above provision was construed by the court of appeal in the case of *Matheka and Another vs Matheka* {2005} 2KLR 455 where the court of appeal 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 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.*

20. 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 a grant to demonstrate the existence of any, some or all the above grounds.

21. Section 76 shows that the grounds can be divided into the following categories: - the propriety of the grant making process; mal-administration or where the grant has become inoperative due to subsequent circumstances.

22. It is trite law that if a grant was obtained fraudulently by making of a false statement or by the concealment from the court of something material to the case; or that the grant was obtained by means of untrue allegation of fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently, such a grant can be revoked or annulled. The law permits the court to revoke a grant on its own motion or on application by an interested person.

23. **Rule 26 of the Probate & Administration Rules** states that :-

*“26(1) Letters of administration shall not be granted to any applicant without notice to every other person entitled in the same degree as or in priority to the applicant.*

*(2) An application for a grant where the applicant is entitled in a degree equal to or lower than that of any other person shall, in default of renunciation, or written consent in Form 38 or 39, by all persons so entitled in equality or priority, be supported by an affidavit of the applicant and such other evidence as the court may require”*

24. Under *Section 76 of the Law of Succession Act* the court can on its own motion revoke a grant where there are sufficient grounds to do so.

25. The petition ought to have been accompanied by a consent as provided under Rule 26 of the Probate and Administration Rules signed by all the beneficiaries of the appropriate renunciation or in the alternative a renunciation duly signed as required.

26. The effect of failure to comply with Rule 26 of the Probate and Administration Rules was ably discussed by the court in ***Al-Amin Abdulrehman Hatimy v Mohamed Abdulrehman Mohamed & another (2013) eKLR*** where the court held that the law of succession by virtue of Rule 26 requires that any application for issue of a Grant must be accompanied by a consent duly signed by all persons entitled in the share in the same estate.

27. There is the duty of making a full and fair disclosure of the material facts. The material facts are those which are necessary for the judge to know in dealing justly with the issues before the court. The duty of disclosure therefore applied not only to material facts known to the petitioner but also to any additional facts which he would have known if he had made reasonable inquiries.

28. The respondents from the evidence availed by the applicant, knew of the applicant and her siblings as beneficiaries and yet kept them in the dark while applying for letters of administration. Non-disclosure of material facts is therefore well established.

29. This court therefore finds the application merited and is granted as prayed. Costs be in the cause.

**S. M GITHINJI**

**JUDGE**

**DATED, SIGNED and DELIVERED at ELDORET this 23<sup>rd</sup> day of October, 2019.**

In the absence of;

Ms Wandara for the Applicant

Mr. Korir for the Respondents

Ms Abigael - Court assistant