



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERUGOYA

MISC. P & A APPLICATION NO.6 OF 2014

IN THE MATTER OF THE ESTATE OF KUTHUA NJIRU - DECEASED

DOMITIRA WANGUI KINYUA.....APPLICANT

VERSUS

MARGARET WAMBERE KUTHUA.....1ST RESPONDENT

TERESIA WANJIRU.....2ND RESPONDENT

JAMES NJIRU KUTHUA.....3RD RESPONDENT

CATHERINE MUTHONI.....4TH RESPONDENT

ESTHER MICHERE.....5TH RESPONDENT

RULING

1.This matter relates to the estate of **KUTHUA NJIRU [DECEASED]** who died intestate on 27.10.1988. A grant of Letters of Administration was issued to MARGARET WAMBERE KUTHUA and was confirmed on 11.8.2000 and a certificate of confirmation of grant dated 16.8.2000 was issued. The estate of the deceased comprised in parcel NO.MUTIRA/KANYEI/283 was distributed to MARGARET WAMBERE KUTHUA - 2.00 acres, JAMES NJIERU KUTHUA – 4.00acres.

2. The applicant DOMITIRA WANGUI KINYUA has filed an application for revocation of grant dated 06/03/2014 claiming that she is the first born daughter of the deceased and the succession cause was conducted behind her back. That she was denied an opportunity of being heard and was disinherited from her father’s estate yet she is a beneficiary.

The 1st, 2nd, 4th and 5th respondents filed replying affidavits which they adopted in court. They confirmed that the applicant was never informed of the proceedings of the succession cause since she had disagreed with the 1st respondent who is their mother.

The 3rd respondent however claims that applicant was aware of the succession proceedings but chose not to follow since she was married. That on 16/04/1999 during the hearing of his objection, the applicant and the rest of the siblings were present in court. That the 1st respondent had in her pleadings advised the court that the applicant was a surviving daughter of the deceased. That the 1st respondent should incorporate the applicant in her share which was to cater for the deceased’s married daughters.

The issue which arises in revocation of grant. Section 76 of the Law of Succession Act provides;

“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.

3. The Court will order a grant to be revoked where it is proved that the proceedings to obtain the grant were defective, the grant was obtained fraudulently and there was concealment from court of some material facts or the grant was obtained by means of making untrue allegations.

4. The applicant DOMITRA WANGUI KINYUA (PW1) testified that she was not involved in the proceedings although the deceased is her father. She told the court that she would like the estate to be redistributed so that she can be given a share. There was really no dispute that the applicant is a beneficiary who is ranking in equal priority with the respondents. A majority of the respondents confirmed that the applicant was not informed and was not involved in the proceedings.

5. The contention by the 3rd respondent that the applicant was in court on 16.4.1999 during the hearing of his objection is not borne out by the record. I have perused the record and there were no proceedings on 16.4.1999.

6. I need not belabor the point, proceedings which have failed to inform all the beneficiaries who rank in equal priority and has failed to cater for that beneficiary are no doubt defective. A grant confirmed in those proceedings cannot stand the test of an application for revocation of grant. A party need not prove all the grounds set out under **Section 76 of the Law of Succession Act**. It is sufficient if a party proves one or more of the ground. The applicant has proved that the proceedings to obtain the grant were defective and were obtained through concealment from Court of something material to the case. The application has merits. I order that the grant confirmed on 16.8.2000 be revoked.

The Administrators shall make provision for the applicant and move the court for a fresh grant to be confirmed.

Each party to bear its own costs.

Dated at KERUGOYA this 20th December, 2019.

L. W. GITARI

JUDGE