



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU

SUCCESSION CAUSE NUMBER 855 OF 2015

IN THE MATTER OF THE ESTATE OF STEPHEN MWANGI.....DECEASED

SERAH WANJIRU MWANGI1ST PETITIONER/RESPONDENT

LUCY MWIHAKI MWANGI 2ND PETITIONER/RESPONDENT

GLADYS WAIRIMU MWANGI 3RD PETITIONER/RESPONDENT

JANE WANGARE MWANGI4TH PETITIONER/RESPONDENT

-VERSUS-

MONICAH NJERI MWANGIOBJECTOR/APPLICANT

RULING

INTRODUCTION

1. Monicah Njeri Mwangi moved this Court vide a Summons for Revocation of Grant dated 1/4/2016 for orders;

a) THAT this Honourable Court be pleased to revoke the Summons of Grant (sic) issued on the 30th day of April, 2014 vide Nairobi High Court Succession Number 314 of 1986.

b) Costs of the Application be borne by the Respondents.

2. The application is based on 5 grounds viz;

1. THAT the Grant was confirmed without full disclosure of all the beneficiaries of the Estate.

2. THAT the procedure adopted in obtaining the Grant of Letters of Administration and subsequent confirmation was flouted.

3. THAT the confirmation had proceeded despite the fact that there was an order in Nakuru High Court Succession Number 193 of 1992 whereby it was ordered thus:-

a. **THAT** the Nairobi High Court Succession Number 314 of 1986 be transferred to Nakuru. And this order was made way back in November.

b. THAT the account be provided to court as there were grievances that the administrators (the four Respondents) were mismanaging the Estate.

4. THAT it is the best interest of justice that the grant be revoked so that all the parties participate fully.

5. THAT it is glaring that the grant was irregularly confirmed.

3. The same is further supported by the sworn affidavit of the Applicant.

4. The Applicant's case is that the grant herein was issued and confirmed despite the existence of Nakuru Succession Cause Number 193 of 1992 in which the cause herein had been ordered transferred to Nakuru (this Court).

5. The grant was confirmed without full disclosure of all the beneficiaries.

6. The Respondents proceeded with this case at Nairobi whereas they were fully aware of the Cause Number 193/1992 at Nakuru.

7. The Application is opposed and Gladys Wairimu Mwangi (the 2nd Respondent) has sworn a Replying Affidavit.

8. She avers that the Applicant was aware of the deceased's wish not to include the Applicant as a beneficiary of his (deceased's) estate.

9. It is the Respondent's case that all legal steps were taken towards the confirmation of the grant.

10. The Applicant is accused of filing another parallel Succession Cause at Nakuru hoping to conclude it faster than the Nairobi cause.

11. The Applicant was duly informed of the Succession process and was in full knowledge of the entire proceedings.

SUBMISSIONS

12. Both parties filed written submissions.

13. The Applicant submits that there was no full disclosure of the beneficiaries of the estate and that, the applicant was left out in the sharing out of the estate.

14. The confirmation of grant in Succession Cause No. 314 of 1986 in Nairobi was done despite the existence of orders of Court in Succession Cause Number 193/1992 which inter alia had directed the taking of accounts and opened the door for consolidation of the succession causes.

15. The Applicant is a widow to the deceased.

16. The Respondents submit that the Applicant came to Court with unclean hands, the whole family including the Applicant had sat together and discussed possibility of filing a succession cause. At that meeting the wishes of the deceased were communicated to the Applicant.

17. All proceedings in obtaining a grant and its confirmation were followed.

18. The Applicant is accused of intermeddling with the estate. She is accused of excluding herself from the succession cause and filed her own proceedings.

19. Counsel submits on the necessary parameters for revocation of a grant under Section 76 of the Law of

Succession Act are not met and refers the Court to the decision in Ezekiel Muanda Masai Eldoret High Court Probate and Administration Cause No. 4 of 1992 where Etyang J (as he then was) held that a grant is liable for revocation where the person who obtained it concealed material information from the Court and excluded some of the survivors of the deceased.

ANALYSIS AND DETERMINATION

20. The issue for determination is whether the Applicant meets the threshold for the revocation of a grant within the meaning of **Section 76** of the **Law of Succession Act**. That Section states;

“Section 76: 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.

21. It is the Applicant's case that she was excluded from Succession Cause No. 314 of 1986.

22. She acknowledges filing another Cause at Nakuru being High Court Succession Cause No. 193 of 1992.

23. My perusal of the 2 files clearly shows both causes exist. Indeed there are substantive orders issued by Hon. Nambuye J (as she then was) which among other things gave liberty to either party to file for consolidation of the 2 causes.

24. It must follow that the filing of Succession Cause No. 193 of 1992 by the Applicant was irregular given that there was another Cause in Nairobi.

25. The question that still begs answers is whether she was included in the Succession Cause No. 314 of 1986 at Nairobi.

26. The ready answer is found in Nairobi High Court Succession Cause No. 314 of 1986.

27. In the Affidavit in support of the Petition, Sarah Wanjiru Mwangi deposes at paragraph 4 thereof that the deceased died intestate and was survived by;

- a) Sarah Wanjiru Mwangi (widow)
- b) Lucy Mwihaki Mwangi (daughter)
- c) Gladys Wairimu Mwangi (daughter)
- d) Jane Wangari Mwangi (daughter)

28. Despite there being no rebuttal of the fact that the Applicant Monica Njeri Mwangi is a widow to the deceased, I note she is not included as a survivor of the deceased.

29. It matters not whatever the alleged wishes of the deceased were as attempted to be explained by the Respondents. Those are issues to be ventilated in the hearing of the cause.

30. By failing to include the name of the Applicant as a survivor of the deceased, and notwithstanding that the Applicant filed a parallel Succession Cause, the Respondents obtained the grant fraudulently by making a false statement of fact and by concealing from the Court of something material to the case.

31. Indeed, the proceedings to obtain the grant were defective in substance as **Section 51(2)** of the **Law of Succession Act** requires that an application for grant shall include information as to;

“(g) In cases of total or partial intestacy, the names and addresses of all surviving spouses, children, parents, brothers, sisters of the deceased and of the children of any child of his or hers then deceased.”

32. The upshot is that the Applicant has achieved the threshold for revocation of the grant herein.

33. Consequently, I allow the Application and revoke the grant issued on the 25th November 1986 and confirmed on 8th July 1987.

34. To move the administration of the estate of Stephen Mwangi (deceased) forward, this matter be mentioned in Court on a date to be agreed upon by the parties to consider the issuance of and to whom, of a fresh grant.

35. This being a family matter, each party to bear its own costs.

Dated and Signed at Kisii this 10th day of January, 2018.

A. K. NDUNG'U

JUDGE