



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

SUCCESSION CAUSE NO 174 OF 2014

In the Matter of the Estate of Japhet M’Nkanabia Kiri alias M’Nkanata

FLORENCE MWARI NKANATA.....PETITIONER

-Versus-

GITONGA JAPHET NKANATA.....INTERESTED PARTY

RULING

Revocation of grant

[1] This court has been called upon, through a Summons dated 11th June 2014 are to:-

- 1. Call for file number CHUKA CM SUCC CAUSE NO 365 OF 2014 to this court and revoke or annul the grant issued therein to petitioner;***
- 2. Order an inhibition to be registered upon land parcel numbers; copy from prayer 2 of the application; and***
- 3. Order cost of the application to be borne by the Respondent.***

[2] The application is expressed to be brought under section 76 of the Law of Succession Act, section 68 of the Registration of Land Act and rule 44(1) of the Probate and Administration Rules. And is supported by the affidavit of the interested party and grounds set out in the application and the submissions filed herein. The Applicant argued that the Chuka court did not have the requisite territorial as well as pecuniary jurisdiction to try the matter. He submitted that the petition indicated the value of the estate to be Kshs. 300,000 which is in excess of the jurisdiction of the Chuka court at the time. He cited section 48(1) of the Law of Succession before the recent amendment in support of this ground. In addition, he submitted that the deceased died while he was domiciled within Meru County and the estate property is also situate within Meru County. He relied upon the decision in **MERU HC SUCC NO 50 OF 2013**. That aside, the Chuka cause was filed without the consent of the Interested Party. He took the view that the filing of the cause at Chuka was to conceal it from the Applicant. He added that the petitioner omitted some estate properties from the cause in particular, **LR NO SEGERA/SEGERA/B 2/107**. Therefore, the grant should be revoked. He cited the case of **MSA HC SUCC NO 318 OF 2011** where the property left out was included in the schedule of distribution. On the basis of the reasons given, the Applicant beseeched the court to revoke the grant.

[3] The petitioner opposed the application and filed a replying affidavit and submissions to elaborate her standpoint. Her arguments are; (1) that she is the daughter of the deceased while the Applicant is a grandson, thus, ranking lower than her for purposes of applying for letters of administration of the estate; (2) that the Applicant did not raise any objection to the filing of the cause at Chuka yet he was fully aware of it; (3) that filing of the cause at Chuka was in order; (4) that the Applicant is being driven by greed to have the prime part of the estate for he is under false impression that daughters of the deceased are not entitled to anything; and (5) that the **LR NO SEGERA/SEGERA/B 2/107** and shares in NIC Bank Limited were omitted by inadvertence as they were not aware of their existence at the time of filing the cause. Such omission is cured by including them in the schedule of distribution rather than revoking the grant. She argued that the estate was diligently distributed to all beneficiaries of the deceased including the Applicant.

DETERMINATION

Discrimination of daughters

[4] From the arguments presented by the petitioner, one is startling; that the Applicant’s desire is based on false impression that daughters of the deceased are not entitled to inheritance. Let me caution any person who thinks that daughters are lesser beings to the sons of the deceased

or that they are not entitled to inherit their late parent's estate. A rude shock will come to the way of such wayward thinking. As I have stated earlier in other cases, every time the law encounters prohibited discrimination of any person on the basis of gender or status or sex or any of the grounds set out in article 27 of the Constitution, its heart throbs with extreme anger; and rebukes such proponents. The constitutional reality is that all children of the deceased, whether sons or daughters, regardless of their station or status in life, are entitled to share their late parent's properties equally in accordance with the principle of equality enshrined in section 38 of the Law of Succession Act. Be it known to all to whom these presents will com greeting.

[5] I turn to the real issues in controversy. Revocation or annulment of grant is governed by section 76 of the Law of Succession Act which provides 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.

[6] The major grounds presented are two; that the Chuka Magistrate Court had no jurisdiction to try the cause; and that some assets of the deceased were omitted. At the time of the filing of the cause, the magistrate court at Chuka had jurisdiction to preside over a cause whose estate property did not exceed Kshs. 100,000. Although there is no valuation provided. I note that the allegation by the Applicant that the petition indicated the value of the estate to be Kshs. 300,000 was not denied by the petitioner. Every chance is that the estate exceeded the jurisdiction of the Chuka magistrate court. In addition, it has been admitted that **LR NO SEGERA/SEGERA/B 2/107** and shares in NIC Bank Limited were omitted, albeit by inadvertence. These are matters which go to the core substance of the proceedings and are potent grounds under section 76 of the Law of Succession Act for revocation or annulment of grant. Accordingly, I revoke the grant issued at Chuka and direct the file number **CHUKA PMC SUCC CAUSE NO 365 OF 2011** in respect of the estate of the deceased herein shall be transmitted to this court immediately for trial and determination. The said cause shall be assigned a new number and this miscellaneous application shall be consolidated with it accordingly. Except, however, I understand the fears by the petitioner about the delay which revocation may cause in these proceedings. No estate should remain without an administrator. Therefore, in exercise of my final discretion under section 66 of the law of succession Act and being guided by the order of priority in Part V of thereof, I appoint the petitioner to be the sole administrator of the estate of the deceased. She shall file and serve Summons for confirmation of grant within 14 days of today. Upon service, the Applicant or any other interested party may file own mode of distribution of the estate within 14 days thereof. The two properties left out in the cause, shall be included forthwith as part of the estate in the application for confirmation. Meanwhile, status quo shall remain as at the time of this ruling. It is so ordered.

Dated, signed and delivered in open court at Meru this 13th day of February 2018

F. GIKONYO

JUDGE

In the presence of:

Mr. Kithinji for Petitioner

M/s. Nyaga for interested party

F. GIKONYO

JUDGE