



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

SUCCESSION CAUSE NO. 323 OF 2006

In the Matter of the Estate of Wiri Imanyara (Deceased)

JULIA GACHORA WIRI.....PETITIONER

-VS-

JOSEPH GAKOTHIA M RUCIAKA.....APPLICANT

RULING

[1] By Summons for Revocation of Grant dated 18th July 2013, in the Applicant seeks the Grant issued and confirmed on 4th March 2008 to the Petitioner to be revoked and or annulled. The Summons is premised on the grounds set out therein as well as in the affidavit sworn by the Applicant. *Inter alia* it was stated that;

1. This Petition was filed secretly and fraudulently to avoid the Applicant and other dependants from inheriting the deceased.
2. The other family members were entitled to a share of the deceased estate as the deceased was their uncle and were in actual possession of the whole of the estate.
3. The Petitioner had failed to disclose to the court all the rightful beneficiaries of the estate and
4. The petitioner included a stranger as a beneficiary.

[2] When the matter came up for hearing on 16th March 2016, the court directed that it be canvassed by way of written submissions. The Applicant filed submissions and reiterated all the matters stated in the summons and the affidavit in support. He insisted that the Applicant's consent who was a direct beneficiary of the estate of the deceased was not sought or obtained. Further, the estate in issue was jointly owned by the deceased and the brother who is also deceased and as such, the Applicant was entitled to a share of the estate and ought to have been involved in the petition.

[3] Despite having been given ample time to respond to the application, the Petitioner did not file any submissions or affidavit either in support of or opposition to the application. Similarly, despite all the beneficiaries having been summoned to appear in court on 20th March 2018, none of them appeared. Affidavit of service on record sworn by Joseph Kithinji a court process server, is evidence that the beneficiaries were served. Henry Kaberia the chief of Kimanchia location where the beneficiaries reside appeared in court on 20th March 2018 and intimated to court that he knew the deceased and the beneficiaries but he did not know where they were.

[4] I note that the contention that this petition was *inter alia* filed secretly and fraudulently to avoid the Applicant and other dependants from inheriting the deceased, and that the petitioner had included strangers as a dependant of the deceased estate remained uncontroverted.

[5] Section 76 of the Law of Succession Act provides circumstances under which Grant may be revoked. The same 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] Consent of persons with equal right to apply for grant of representation must always be give notice of proceedings and their consent should be sought and or obtained. That is not the case here. Therefore, this grant is a candidate for revocation under section 76 of the Law of Succession Act. Accordingly, the Grant issued and confirmed on 4th March 2008 to the Petitioner is hereby revoked. This being a succession matter there will be no order as to costs.

Dated, signed and delivered in open court this 31st day of May 2018.

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F. GIKONYO

JUDGE

In the presence of:

M/s. Wambugu advocate for Mr. Kimathi for applicant.

Petitioner – Absent

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F. GIKONYO

JUDGE