REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

SUCCESSION CAUSE NO. 174 OF 1999

CHRISTOPHER MUKUNGA MUNYI.....APPLICANT

VERSUS

PETERSON KABUITU MWANGI.....RESPONDENT

RULING

On 7th October, 2016, a grant of letters of administration intestate was made to the respondent in respect of the estate of the late Kinogu Mukiria who died domiciled in Kenya on 5th June, 1980. The grant was made on the basis of the respondent's application dated 20th July, 2016 in which he applied to have the initial grant made in respect of the same estate on 18th November, 2008 revoked on the ground that the administrator had died and therefore the grant had become inoperative and useless. His application was allowed and he was appointed as the administrator in place of the deceased administrator, who happens to have been his father.

That grant was subsequently confirmed on 17th January, 2017 and the estate distributed in accordance with his proposal set out in the affidavit in support of the summons for confirmation of grant.

It has now turned out that the respondent's father was not the sole administrator of the deceased's estate but was a joint administrator together the applicant. This information has been revealed in the applicant's summons for revocation of grant dated 2nd October, 2017 and the summons in general form filed alongside it on the same date. This latter summons generally seeks for an injunction restraining the transferees of the estate from alienating their purported share of the estate until the summons for revocation of grant has been heard and determined. It is this summons that is the subject of this ruling.

Upon perusal of the record I have confirmed that that indeed the original grant was made in the joint names of the respondent's father, one Elias Mwangi Kinogu and the applicant on 18th November, 2008.

It follows that the grant could not have become useless or inoperative by the fact of death of the joint administrator alone. This is because, the moment the joint administrator died, all the powers and duties appurtenant to the administration of the estate became vested in the applicant who is the surviving administrator. This, in a nutshell is what section 81 of the Law of Succession Act, cap. 160 is all about; it states as follows:

> **81..Upon the death of one or more of several executors or administrators to whom a grant of representation has been made, all the powers and duties of the executors or administrators shall become vested in the survivors or survivor of them:**
>
> **Provided that, where there has been a grant of letters of administration which involve any continuing trust, a sole surviving administrator who is not a trust corporation shall have no power to do any act or thing in respect of the trust until the court has made a further grant to one or more persons jointly with him.**

The proviso is of little relevance here but the point is that the farthest the respondent could go was to seek to be substituted in place of his father as a joint administrator with the applicant rather than having the initial grant revoked. This provision of the law is clear that there was no basis for such action.

It is obvious that the respondent suppressed the aspect of joint administration in his summons of 20th July, 2016 out of which, as noted, he obtained the orders for revocation of the initial grant and got himself appointed as the sole administrator of the deceased's estate. He did not disclose the fact that that his father was only a joint administrator together with the applicant. The picture he presented was that his deceased father was the sole administrator. I am convinced that had the court been aware of these facts, it would not have revoked the original grant and appointed the applicant as the sole administrator.

What I am saying in so many words is that there was no basis for revocation of the grant made on 18th November, 2008; in the same breath, the grant made to the respondent on 7th September, 2016 ought not to have been made.

For this reason, and in exercise of powers vested in this court under Rule 73 of the Probate and Administration Rules according to which this court is empowered to make such orders as may be necessary for the ends of justice or prevent abuse of the process of the court, I hereby set aside the confirmation proceedings of 17th January, 2017 together with the order confirming the grant. In addition, I hereby set aside the certificate of confirmation of grant issued by this court on 17th January, 2017. Accordingly, I direct that the sub-division of the deceased's estate which is land Parcel No. Kiine/Ruiru/646 and the subsequent transfers and registration of the various parcels excised from the estate into the names of persons appearing on the face of the certificate of confirmation of grant be cancelled forthwith. The deceased's estate shall be restored back to his name. The District Lands Registrar, Kirinyaga is hereby ordered to act accordingly.

As for the applicant's summons dated 2nd October, 2017 I need not belabour the point that he has made out a case for an injunction. I hereby grant the orders for injunction in terms of prayers 2 and 3 of that summons. These orders are, however, subservient to the orders that I have already given setting aside the certificate of confirmation and restoration of the estate into the deceased's name. The orders will therefore only remain in force pending compliance by the Registrar of Lands with the orders for cancellation of the titles and restoration of the estate to its original status. The costs will be in the cause. It is so ordered.

Dated, signed and delivered in open court this 22nd June, 2018.

Ngaah Jairus

JUDGE