



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**SUCCESSION CAUSE NO. 1587 OF 2012**

**IN THE MATTER OF THE ESTATE OF KIVUTO NDETI (DECEASED)**

**RULING**

1. The deceased herein died on 31<sup>st</sup> March 2012. Representation herein was sought in a petition lodged herein on 15<sup>th</sup> October 2012, by Cecilia Situmai Ndeti and Michael Kyende Ndeti, in their purported capacities as widow and son, respectively, of the deceased. The deceased was expressed to have been survived by the widow and four (4) children – Caroline Mwelu Ndeti, Michael Kyende Ndeti, Mkwama Kivuto Ndeti and Raphael Kyalo Ndeti. He was said to have died possessed of the following assets: LR Nos. 209/7311, 7741/82, 37/175, 7149/9, 337/991, 13323/1, 337/849 and 337/923; Katelembo Plots Nos. 1685, 3001 and 3800, parcels of land at Lukenya being Mavoko Town Block 3/107, 1063, 1387, 2397, 2401 and 2446; money in accounts at Standard Chartered Bank; and shares in Standard Chartered Bank and Kenya Re-Insurance Corporation Limited. He was expressed to have died without liabilities.

2. A grant of letters of administration intestate was accordingly made to the petitioners on 24<sup>th</sup> January 2013, and a grant of letters of administration intestate was duly issued to them accordingly. The said grant was duly confirmed on 30<sup>th</sup> October 2013, and a certificate of the said confirmation duly issued to the administrators. The estate was shared out between the widow and her children at stated proportions. The certificate of confirmation of grant was thereafter rectified several times upon applications by the administrators.

3. What I am called upon to determine is a summons for nullification of the confirmed grant. The application is dated 11<sup>th</sup> July 2016. It is brought at the instance of eight (8) individuals who characterize themselves as applicants and interested parties. The affidavit in support of the application is sworn by a brother of the deceased, Harrison Mulili Ndeti, while the other applicants are administrators of estates of deceased brothers of the deceased. Their case is that the assets that were presented before this court for distribution as forming the estate of the deceased herein did not in fact belong to that estate, instead they belonged to the larger Ndeti family and the deceased only held the same in trust for the other members of that family. He avers that the family operated businesses in a partnership of the brothers in the larger family known as PN Ndeti & Bros. It is asserted that the said assets were acquired through that outfit. The deponent referred to suits that arose between the deceased and some of his brothers over some of the assets. In one suit, HCCC No. 430 of 1981, the court finally found that the said property belonged to the family and not the deceased. However, at confirmation of grant it is said that the administrators ignored that outcome and sought to dispose of the said asset as property of the deceased. He further states that there is a suit by third parties, ELC No. 1116 of 2015, where they seek that the partnership assets be shared out amongst the partners, which include the deceased, yet the administrators have sought to distribute these assets as if they belong to the estate of the deceased. The deponent has attached several documents to support his case.

4. Upon being served with the application, the first administrator, Cecilia Situmai Ndeti, swore an affidavit on 28<sup>th</sup> February 2017 in reply. She states that whereas she was aware of the businesses being run by the larger Ndeti family, there were others that were carried out individually by the brothers, meaning that there were assets acquired jointly and others separately. She asserts that PN Ndeti & Brothers Limited does not exist anymore for it was deregistered by the Registrar of Companies. She asserts that the assets she listed as belonging to the deceased did in fact belong to him, and that he did not hold them in trust for anyone. She also asserts that the court did not find for the larger family in HCCC No. 430 of 1981 as alleged.

5. Further affidavits were exchanged by the parties addressing more or less the same points.

6. I directed on 28<sup>th</sup> June 2017 that the said application be disposed of by way of written submissions. Both sides complied with those directions by filing their respective written submissions, complete with the authorities that they propose to rely on. I have perused through the same and noted the arguments advanced in them.

7. The application before me is for revocation of the confirmed grant. The discretion to revoke grants is given by section 76 of the Law of Succession Act, Cap 160, Laws of Kenya. A grant may be revoked on three general grounds. One, where there were problems with the process of obtaining it. Two, where there were problems with administration of the estate. Three, where the grant has become useless and inoperative for some reason. The applicants in this case appear to have issues with the orders that were obtained at the confirmation of the grant. They do not have any problem with the manner the grant was obtained, nor do they say that the administrators are guilty of maladministration of the estate in the terms set out in section 76(d), neither is it their case that the grant made to the administrators has become useless or inoperative. Problems with confirmation of grant are not a ground for revocation of the grant. Indeed, in section 76 the only issue with confirmation of grant is the failure to apply for it within the duration allowed. It's only then that a party can move for revocation of the grant, and not for any other reason concerning confirmation of grant. For avoidance of doubt, section 76(d)(i) provides as follows-

***‘That a grant of representation ... may at any time be revoked or annulled if the court decides ... that the person to whom the grant was made has failed, after due notice and without reasonable cause ... 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 ...’***

8. As it is there is no proper case before me for revocation of the grant herein for the reasons advanced by the applicants. It is not alleged, nor demonstrated, that the process of obtaining the grant was attended by the problems envisaged under section 76(a)(b) and (c), or the

administrators failed to do the things expected of them as set out in section 76(d), or that the grant had become useless and inoperative as contemplated by 76(e).

9. The proper remedy for a person who is unhappy with the confirmation process or with the orders granted is to challenge the same on appeal or on review. Indeed, such a person ought to take advantage of the provisions of rule 40 of the Probate and Administration Rules, and raise protests to the proposed confirmation, which would then allow them to be heard as per the provisions of rule 41 of the said Rules. There was occasion for the applicants to follow that process, it has not been demonstrated that they were unaware of the same. The material that they have placed before me ideally ought to have been placed before the court at confirmation of the grant.

10. For the reasons given above, I do not find basis upon which I should revoke the grant made herein. I shall accordingly dismiss the application dated 11<sup>th</sup> July 2016 with costs to the administrators.

**DATED and SIGNED at NAIROBI this 14<sup>TH</sup> DAY OF JUNE, 2018.**

**W. MUSYOKA**

**JUDGE**

**DELIVERED and SIGNED this 21<sup>ST</sup> DAY OF JUNE, 2018.**

**M. MUIGAI**

**JUDGE**