



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KAKAMEGA
SUCCESSION CAUSE NO. 549 OF 2012
IN THE MATTER OF THE ESTATE SHEM KITANGA DECEASED
AND
IN THE MATTER OF AN APPLICATION FOR REVOCATION OF GRANT
BETWEEN
SOUTHEY MUHAMBE KITANGA.....APPLICANT
VERSUS
JUSTUS KITAKA RIJODI.....RESPONDENT
R U L I N G

1. The applicant has filed an application dated 5th July, 2012 seeking for the revocation of grant of letters of administration issued to the petitioner/ respondent herein on the grounds that :

- (i) That the grant was fraudulently obtained by making of a false statement and by concealment of material facts which is contrary to the law.
- (ii) That the succession cause filed in Vihiga was intended to defraud the true heirs of the deceased's estate of their rightful entitlements as the applicant was never included as a beneficiary nor his consent obtained.
- (iii) That **JUSTUS KITAKA RIJODI** to whom the grant was issued is not diligently administering the deceased's estate and is secretly planning to dispose of part of the estate without the consent of the beneficiaries.

2. The application was supported by the affidavit of the applicant who depones, inter alia that:-

- (1). He is a son to the deceased herein.
- (2). That the deceased was the registered owner of L.R. No. Kakamega/ Viyalo/606.
- (3). That at the time of demise the deceased had two sons, namely the petitioner/respondent and the applicant herein.
- (4). That the estate of the deceased had a liability of a buyer by the name Herbat Lumbasio.
- (5). That the petitioner/respondent herein without knowledge or consent of the applicant secretly obtained a grant of letters of administration that he used to register the above named parcel of land in his name.
- (6) That the grant was obtained by concealment from the court of material facts with the sole aim of defrauding the applicant of his inheritance.

3. The application was opposed by the petitioner/respondent though his replying affidavit dated the 4th March, 2016 in which he deponed

inter alia, that:

- (1). That prior to his death, his father had bequeathed his estate to his children.
- (2). That his father had given the applicant land in Trans- Nzoia where the applicant lives to date.
- (3). That the applicant had a house on land parcel No. Kakamega/Viyalo/606 that he demolished on injunctions of his father prior to moving to the land of Trans- Nzoia.
- (4). That land parcel No. Kakamega/Viyalo/606 was given to him by his father as his share.
- (5). That the deceased had sold a portion of the land to Herbat Lumbasio.
- (6). That he had to transfer the land by transmission from the deceased first before transferring the share of the buyer to him.
- (7). That he told Herbat Lumbasio to meet the cost of the transfer of his portion but he did not co-operate.
- (8). That he did not intend to defraud the said buyer of his share of the estate as he has not interfered with the buyer's use of the land.

Submissions:

4. The petitioner /respondent was represented in the application by the firm of **D.C Chitwah & Co. Advocates** while the applicant was represented by **Nyanga & Co. Advocates**. In their submissions, the advocates for the petitioner/respondent basically reiterated what is contained in the replying affidavit and requested the court to dismiss the application.

The advocates for the applicant submitted that the petitioner did not get the consent of the applicant before filling the petition at Vihiga law Courts. That he did not disclose to the court the names of all the beneficiaries of the estate when he filed the petition. Therefore that the grant was obtained fraudulently through concealment of material facts to the court and it should therefore be annulled and/or revoked . The advocates cited the case of. **In the matter of the Estate of Peter Mwangi Njoroge(deceased) and Jamleck Maina Njoroge Vs Mary Wanjiru Mwangi** , Nairobi Highcourt P&A Succ. Cause No. 1817 of 2005, where the grant of letters of administration were revoked on the basis that the respondent had concealed some material facts to the court.

5. The application is made under sections 76 of the Law of Succession that states as follows:

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) ...
- (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) ...
- (d)...
- (e) ...

6. I have perused the court file from Vihiga Law Courts. A succession cause starts with an introduction letter from the chief of the area where the intended petitioner hails from. Though this is not a legal requirement, it is presumed that the chief is well familiar with the family of a deceased person and can inform the court of the beneficiaries left behind by a deceased.

The chief's letter that was filed in the succession cause did not mention any other beneficiary other than the respondent/petitioner.

7. In the affidavit in support of the petition for letters of administration intestate, P & A 5 that the petitioner/respondent filed with the court, he indicated that he was the only person who survived the deceased. It is now clear that the petitioner / respondent has a brother by name of **Southey Muhambe Kitanga**, the applicant. The same affidavit requires one to indicate whether the estate has a liability or not. The petitioner/respondent did not indicate this in the affidavit, yet he now concedes that the estate has a liability in the form of a purchaser.

8. During the confirmation proceedings before the Vihiga Court, the petitioner/respondent did not disclose the above stated information to the court. Whether the petitioner/respondent was in his understanding the sole beneficiary to the estate was not the issue. The law required him to disclose all the beneficiaries to the estate and any liability to the estate but he failed to do so. It is then clear that the grant of letters of administration was obtained fraudulently by concealment of material facts to the court- that there was another beneficiary to the estate and

that there was a liability to the estate.

9. The court has powers under section 76 of the Law of Succession Act to revoke a grant that has been obtained fraudulently by concealment from the court of a material fact.

Other than seeking for the revocation of the grant, the applicant did not seek for any other orders yet he was saying that the petitioner/respondent has registered the land in issue in his name. He did not file any document to show the new title number to the land. He did not make any prayer for the cancellation of the new title deed.

10. The respondent/petitioner admits that he has registered the land into his name. This court has inherent powers under rule 73 of the Probate and Administration Rules to make such orders as may be necessary for the ends of justice and to prevent abuse of the court process. The respondent/ petitioner registered land parcel No. Kakamega/Viyalo/606 into his name by use of a grant that was fraudulently obtained. This was an abuse of the court process. The application before the court is therefore highly merited. The court therefore makes the following orders.

(1). The grant of letters of administration intestate issued to **Justus Kitaka Rijodi** in Vihiga SRM's Court succession cause No. 45 of 2003 dated 25th August, 2003 is hereby annulled and revoked.

(2). The certificate of confirmation of grant issued to **Justus Kitaka Rijodi** in Vihiga SRM's court Succession cause No. 45 of 2003 dated 25th February , 2004 is similarly annulled and revoked .

(3). The applicant herein is at liberty to make an application for cancellation of any title issued on subsequent registration of land parcel No. Kakamega/Viyalo/606

(4). A fresh grant of letters of administration is hereby to issue to both the applicant and the respondent.

Each party to bear its own cost.

Orders accordingly.

Delivered, Dated and signed at Kakamega this 20th day of June, 2018

J. NJAGI

JUDGE

In the presence of :

.....N/A.....for Applicant

.....N/A.....for Respondent

.....George/RutoCourt Assistant

Parties:

ApplicantAbsent.

Respondent....Present.