



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

SUCCESSION CAUSE NUMBER 500 OF 1997

IN THE MATTER OF THE ESTATE OF KIBOWEN KOMEN (DECEASED)

SOTE KOMENAPPLICANT

-VERSUS-

MOHAMMED KOMEN.....RESPONDENT

RULING

1. Before Court is the summons for revocation or annulment of grant dated 21/6/2018 in which Sote Komen, a widow and beneficiary of the estate of the deceased (Applicant) herein seeks orders;

1. Spent.

2. THAT the Court be pleased to annul and or revoke the grant of letters of administration issued to Mohammed Komen, the Respondent herein.

3. THAT this Court be pleased to appoint and issue a new grant of letter of administration for the deceased to Stephen Kiptui Kibowen to administer the remainder of the estate of the deceased as per the judgment delivered by the Court on 30th July, 2010.

4. THAT upon granting prayer 4 of this application, this Honourable Court be pleased to make an order for provision of security to the appointed administrator for purposes of subdividing L.R. NO. 10684 among the beneficiaries and further sale of 66 acres as per the judgment of the Court delivered on 30th July, 2010.

5. THAT the costs of this application be provided for.

2. The Application is supported by the affidavit of the Applicant and on grounds;

a) **THAT** the Respondent to whom the grant was made has failed, after due notice and without reasonable cause to proceed diligently with the administration of the remainder of the estate.

b) **THAT** the Respondent has since also become sickly thus incapable of further administration of the estate.

c) **THAT** despite Court orders being issued on 20th March, 2018 required that the administration of the estate be finalized within 90 days, the Respondent has become incapable of complying with the said orders necessitating this application.

d) **THAT** the Respondent has also been colluding with one of the beneficiaries, Grace Samson to frustrate the Applicant herein and deny her the right to access her share of the estate and more with respect to the property known as L.R. No. 10684.

e) **THAT** the orders sought ought to be granted in the interest of justice.

3. In a nutshell, the Applicant's case is that the Administrator Respondent has failed after due notice and without reasonable cause to proceed diligently with the administration of the remainder of the estate.

4. It is added that the administrator has become sickly and thus incapable of further administration of the estate.

5. By a Court order issued on 20/3/2018, the Administrator/Respondent was required to complete the administration of the estate within 90 days but he has become incapable of complying with the said orders.
6. The Respondent is accused of colluding with one Grace Komen to frustrate the Applicant herein and deny her the right to access her share of the estate more specifically with respect to the property known as L.R. No. 10684.
7. Several letters and copies of orders issued against the Respondent seeking that he completes the administration of the estate are annexed.
8. The Applicant seeks to have Stephen Kiptui Kibowen appointed as the Administrator to finalise the administration of the estate.
9. The application is opposed. The Respondent avers that the application is filed in bad faith. The Applicant is aware of the Respondent's ill health yet insists on antagonizing him without human consideration. He states that he has been sick and undergoes dialysis three times a week.
10. He states that when the ruling dated 20/3/2018 was delivered he instructed his advocate to apply for an amended grant and certificate of confirmation of grant. The intention to change administrators is not only selfish but mischievous with an intention to defraud the estate. There is no consent from all the beneficiaries.
11. The application is rubbish for being legally and procedurally unsound.
12. The application is supported by beneficiaries William Komen, Michael Komen and a creditor to the estate.
13. The provision for revocation and or annulment of a grant of representation is found in **Section 76** of the **Law of Succession Act**. The Section provides;

“S. 76. 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 has ordered or allowed; 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.”

14. This cause was lodged in Court in 1997. The High Court and the the Court of Appeal delivered themselves on the matter and what remained was the finalisation of the administration of the estate in compliance and within the very clear orders of Court.

15. That notwithstanding, the parties have engaged in a see saw for eons culminating to, at one point, the resignation of 2 Administrators.

16. This left the duty to administer the estate on the shoulders of the Respondent. This is pursuant to **Section 81** of the **Law of Succession Act**. The Section provides;

“S.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.”

17. This matter continued dragging in Court and the same as attested by the record has come to Court time without number with a view to moving the administration of the estate forward but to no avail. The record will bear witness of the numerous orders and directions that have gone unheeded by the administrator over time.

18. This unfortunate state of affairs culminated with the snapping of the patience of beneficiary Sote Komen who in an application vide a summons for revocation of grant dated 12th July, 2017 moved the Court to revoke the grant.

19. The result of that application can be found in the ruling of this Court (*Odero J*) in her ruling dated 20/3/2018. The Court rendered itself as follows;

1. The Respondent should remain the administrator of the estate of the deceased. The Respondent is ordered to sub-divide the property and conclude the transmission to the Applicant of her share within ninety (90) days of today's date.
2. The matter will be mentioned after 45 days to enable the Administrator (Respondent) to give the Court a progress report.
3. In the event of default the Applicant remains at liberty to apply for the grant to be revoked.
4. As this family matter each party shall meet their own costs.

20. The 90 days have come and passed. The Respondent has not finalised the administration of the estate. There is no iota of evidence of a single step forward in the administration of the estate.

21. Instead, the Respondent unwittingly confirms the reason for his inability to conclude the administration of the estate by giving a clear and detailed incapacitation through illness.

22. While this Court sympathises with the Respondent's ill health, the Court cannot shut its eyes to the need to have the beneficiaries and any other interested party getting their rightful share of the estate herein.

23. That cannot be possible when the administrator is unwilling or incapable of administering the estate as per the law established.

24. To my mind, I need not go further than to look at the record herein and note the slow pace, nay, no pace at all in the progress of the administration of the estate herein and the confirmation by the administrator of his very serious illness that requires dialysis three times a week, to conclude that the Administrator herein has failed, or to proceed diligently with the administration of the estate.

25. And this failure is not confined to the period of the alleged illness. The history of the matter from the record herein confirms that the administrator has failed all along to diligently proceed with the administration of the estate.

26. Indeed, the Court in its order of 20/3/2018 was already alive to this lethargy and gave 90 days within which the administrator was to comply in default of which the parties were at liberty to apply for revocation of the grant.

27. As regards the prayer to have Stephen Kiptum Kibowen appointed as the administrator of the estate, I find no objection from other beneficiaries.

28. Consequently, and for reasons above stated, I am satisfied that the administrator herein has failed to diligently proceed with the administration of the estate herein and I make the following orders;

1. The grant of letters of administration issued to Mohamed Tanui Komen is hereby revoked.
2. Stephen Kiptui Kibowen is appointed administrator of the estate of Kibowen Komen forthwith and an amended grant and certificate of confirmed grant is to issue.
3. The newly appointed administrator to proceed with the administration of the estate in compliance with and within the orders of Court on record.
4. Within 90 days of this order the newly appointed administrator to render a progress report in the administration of the estate.
5. The administrator shall seek police security if and when necessary to give effect to the above orders.

Dated and Signed at Nakuru this 31st day of July, 2018.

A. K. NDUNG'U

JUDGE