



**REPUBLIC OF KENYA**

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

**SUCCESSION CAUSE NO. 1246 OF 2012**

**JAMES NDUMIA MBUTU.....APPLICANT**

**VERSUS**

**MARY WANJIKU HINGA.....ADMINISTRATRIX/RESP.**

**JUDGMENT**

On 29<sup>th</sup> October, 2012, the respondent petitioned for and was subsequently granted letters of administration intestate of the estate of her late mother, Biggitah Muthoni Hinga (deceased) who died domiciled in Kenya on 9<sup>th</sup> June, 2012. Her last place of residence was Charity sub-location in Nyeri County.

According to the affidavit in support of the petition, the deceased was survived by the respondent, who as noted is her daughter, her son Peter Hinga Muthoni and two minor grand children named as B W and B N.

The assets listed as comprising her estate are Title Nos. Mweiga/Blk 5/Muthuni/1062, Mweiga/Blk 5/Muthuni/1063, Nyeri/Endarasha/927 and Nyeri/Endarasha/1428. They are all estimated to be worth Kshs. 1,000,000/=. The deceased had no liabilities.

The grant was made on 23<sup>rd</sup> April, 2013; it was later confirmed on 3<sup>rd</sup> April, 2014 and the estate distributed amongst the deceased's survivors.

By a summons for revocation or annulment of grant dated 6<sup>th</sup> April, 2017, the applicant sought to have the grant annulled or revoked on the ground that the respondent concealed from the court a material fact; in particular, she failed to name the applicant as the person who ought to have inherited Title No. Mweiga/Blk 5/Muthuni/1062. In the same breath, it was also alleged that the grant was obtained by means of untrue and fraudulent allegations in that some beneficiaries were omitted from the list of beneficiaries.

Amongst the documents that the applicant exhibited on his affidavit in support of his summons are copies of the grant of letters of administration and the certificate confirming the grant made in the applicant's son favour in respect of the deceased's estate but in this Court's Succession Cause No. 553 of 2013 (Nyeri).

When the applicant appeared before me on 7<sup>th</sup> April, 2017 to prosecute his summons ex parte in the first instance, I noted this obvious anomaly and therefore I directed his previous advocates to surrender the letters of grant made to him in Succession Cause No. 553 of 2013. Counsel complied and surrendered the grant together with the certificate confirming it vide their letter dated 11<sup>th</sup> April, 2017. I also directed the deputy registrar to make available the original record in Succession Cause No. 553 of 2013 at the hearing of the applicant's summons. This directive was also complied with and the relevant file was availed.

I gather from this latter cause that the applicant's son petitioned for letters of administration of the deceased's estate on 5<sup>th</sup> September, 2013 in his capacity as a 'purchaser'. The respondent is indicated to have been cited in that cause to accept or refuse letters of administration. It would appear that since she did not respond to the citation, the grant was made to the applicant as the sole administrator of the deceased's estate. The respondent's son had the only asset listed in his petition as comprising the deceased's estate, which is Title No. Mweiga/Blk 5/Muthuni/1062 devolve to him as the absolute proprietor.

As fate would have it, he died before the estate was transferred into his name or, in succession parlance, before the completion of the administration of the estate. Oblivious of the existence of the present succession cause, this court allowed the applicant's application to revoke the grant on the basis that as a result of his son's death, the grant had become useless and inoperative due to subsequent circumstances. Accordingly, the applicant was appointed the administrator of the deceased's estate in place of his deceased son.

The applicant has deposed that he only became aware of the present cause on 5<sup>th</sup> April, 2017; however, it is not clear from his summons how he came to know of this cause. His contention is that he should have been named as a beneficiary by the respondent in this succession cause and Title No. Mweiga/Blk 5/Muthuni/1062 should have been registered in his name apparently because he is the personal representative of

his son who, in his opinion, is the deceased's rightful heir.

I must say at the outset that the petition in Succession Cause No. 553 of 2013 is void ab initio. The proceedings in it including the purported grant of letters of administration and their subsequent confirmation are equally null and void for the simple reason that there already existed a petition for grant of letters of administration intestate in respect of the same estate. Section 51 of the Law of Succession Act, cap' 160 under which the petition for grant of letters of administration is made does not contemplate parallel petitions being filed in different and separate succession causes in respect of the same estate. If the applicant was, for whatever reason, aggrieved by the respondent's petition, it behoved him to file an objection under section 68(1) of the Act and subsequently a cross-application in accordance with section 68(2).

It follows that in light of the nullity of Succession Cause No. 553 of 2013, the validity of the grant made to the respondent to administer her mother's estate cannot be questioned on the basis of the grant obtained in that cause.

The plaintiff's claim that his son purchased part of the deceased's estate does not, of itself, accord him inheritance rights. If his claim is, as I understand it, that of a purchaser for value, then such claim lies in contract. He is at liberty to institute a cause of action against the estate for any of the remedies available in contract; in my respectable view, he is a claimant to the estate rather than a beneficiary.

I am thus inclined to come to the conclusion that the applicant's summons dated 6<sup>th</sup> April, 2017 does not have any merit and it is hereby dismissed with costs.

For the reasons I have given, and in exercise of the powers given to this Court under section 47 of the Law of Succession Act and Rule 73 of the Probate and Administration Rules, I hereby revoke the grant made to the applicant in Succession Cause No. 553 of 2013. For this reason, I direct that this ruling be filed in that cause as well. It is so ordered.

**Dated, signed and delivered in open court this 27<sup>th</sup> July , 2018**

**Ngaah Jairus**

**JUDGE**