



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 281 OF 2007

IN THE MATTER OF THE ESTATE OF JAMES KARUNGU KIMANI (DECEASED)

PETER KIMANI KARUNGU1ST APPLICANT

JOSEPH NDERI KARUNGU2ND APPLICANT

VERSUS

ALICE MUGURE KARUNGU.....ADMINISTRATRIX/RESPONDENT

RULING

1. A grant of letters of administration intestate in respect of the estate herein was made and issued to Alice Mugure Karungu on 18th September 2009. Consequently, a certificate of confirmation of grant was issued on 11th May 2011 and the estate distributed as proposed in the affidavit in support. According to the certificate of confirmation, the property was to be registered in the name of Mary Thithi Karungu their mother to hold in trust for her children in equal share.
2. The names of the children were listed as Alice Mugure Karungu, Peter Kimani Karungu, Philip Karanja Karungu, Samuel Muhia Karungu, Joseph Nderi Karungu, Teresia Mukuhi Karungu and Ann Wairimu Karungu. On 6th May 2013, the certificate of confirmation of grant was rectified and additional assets included. Again on 30th September 2015 the rectified grant was further rectified thereby adding more assets that had been left out. Just like the original certificate, the property was to be registered in the name of their mother Mary Thithi Karungu in trust for the children in equal share.
3. On 4th December 2018, Peter Kimani Karungu (1st applicant) and Joseph Nderi Karungu (2nd applicant) filed a Chamber Summons for revocation of grant pursuant to Section 76 (d) of the Law of Succession Act Rule 44, 67 and 73 of the Probate and Administration rules. The applicants who are sons to the deceased and siblings to the Administratrix sought revocation of the grant of letters of administration together with the certificate of confirmation and fresh ones to issue to them jointly.
4. The application is premised on grounds that the respondent (Administratrix) has failed to produce to the court within prescribed time the full inventory or account of administration as is required by the provisions of the Law of Succession Act; that the entire estate is now in a state of uncertainty as the administratrix/respondent has failed to execute or transfer various legacies to the intended beneficiaries in accordance with the schedule of administration and as per the certificate of confirmation; that the grant has been rendered inoperative and useless in the face of the beneficiaries due to inactions of the administratrix/respondent; that it is in the interest of justice that a fresh grant and certificate do issue to the applicants jointly to enable them execute the confirmed grant.
5. The application is further supported by the affidavits in support separately sworn on 28th November 2018 by the applicants. The averments contained therein are a replica of the grounds stated above. However, it is the applicants' contention that part of the estate is going into waste as the unclaimed financial assets authority is in the verge of forfeiting some of the unclaimed shares and dividends held at Barclays bank in the name of the deceased. They attached a demand letter dated 2nd July 2018 from the authority notifying them of the intended forfeiture. They further attached a consent signed by the other beneficiaries and the widow.
6. Despite service of the application, the respondent did not bother to file any response. Having confirmed through a return of service effected on the respondent by Peter Kinyanjui Muiruri a Process Server, the court proceeded to hear the application exparte.
7. During the hearing, Mr. Mungai for the applicant reiterated the grounds on the face of the application and averments contained in the affidavit in support.
8. I have considered the application herein, affidavit in support and oral submissions by counsel. Basically, the application is not opposed. However, it would suffice to bring out the law governing revocation of grants and under what circumstances a court can grant such orders. Section 76 of the Law of Succession Act provides that, a grant of representation whether or not confirmed, may be revoked or annulled if the

proceedings to obtain the grant were defective in substance, that the grant was obtained fraudulently by making of a false statement or by the concealment of an untrue allegation of a fact essential in point of law to justify the grant notwithstanding that the allegation made in ignorance or inadvertently or that the person to whom the grant was made has failed after due notice and without reasonable cause either to apply for confirmation of the grant within one year, proceed diligently with the administration of the estate to produce in court an inventory of assets and or accounts or that the grant has become useless and in-operational.

9. It is apparent that the grant was confirmed on 11th May 2013. It is now 5 years down the line. No steps have ever been taken to execute the grant. Although having been given an opportunity to come to court and give her side of the story, the administratrix did not bother to respond. As a trustee appointed by the court to oversee diligent administration of the estate, the administrator has no discretion but to simply discharge her responsibilities as required under the law. **(See Matheka and Another vs Matheka (2005) IKL P456**. It is trite that a court can on its own motion revoke a grant where the factors stated above are proved **(See in the matter of the estate of Njau Ndungi (deceased) Nairobi High Court Probate and Administration 863/1991)**.

10. In the instant case, the allegation more against the administrator is that she has failed to discharge her duties by failing to sign necessary transmission forms in favour of the beneficiaries and that some shares due to the estate are about to be forfeited to the Assets Recovery Authority. Whereas the respondent/Administratrix has failed to complete the administration of the estate for over five years, she is not under obligation to transfer the property to the beneficiaries directly. The certificate of confirmation is plain and clear that all properties are to be registered in the name of their mother Mary Thithi Karungu for the benefit of her children in equal share. That element of trusteeship is still in force hence nobody can claim direct transfer of any of the properties.

11. It would appear that the applicants are contemplating direct transfer and registration of their share. Unless the grant is amended, the property shall be transferred to their mother who shall hold in trust for them in equal share.

12. Having clarified on the issue of share distribution, ownership and registration, this court is duty bound to ensure that administration of the estate is completed without further delay. Considering that the respondent has been unable to complete the administration exercise, she cannot be trusted with the estate now that some of the estate is at the verge of being forfeited to the Assets Recovery Authority.

13. For the above reasons stated, it is my finding that, the respondent/ Administrator has failed to administer the estate diligently as required in law thus rendering the execution of the grant in-operational.

14. Accordingly, the application herein is allowed with orders that the grant of letters of administration and rectified certificate of confirmation of grant issued herein on 18th September 2009 and 30th September 2015 respectively be and are hereby revoked and fresh ones to issue in the names of the applicants jointly. For avoidance of doubt, the transfer of the property shall be in accordance with the confirmed grant as rectified on 30th September 2015.

Order accordingly.

DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 21ST DAY OF DECEMBER, 2018.

J.N. ONYIEGO

(JUDGE)