



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT BUSIA

SUCCESSION CAUSE NO. 113 OF 2012

IN THE MATTER OF THE ESTATE OF NASUBO

NYAKOBI ALIAS NASUBO SAULO.....DECEASED

AND

PETER EKESA BARASA.....PETITIONER

VERSUS

SAULO BARASA NYAKURI.....OBJECTOR

RULING

(SUMMONS FOR REVOCATION OF GRANT DATED 13TH OCTOBER, 2015)

1. The Applicant/Objector, Saulo Barasa Nyakuri is the father of the Respondent/Petitioner, Peter Ekesa Barasa. Through these succession proceedings, the Respondent sought to administer the estate of the deceased Nasubo Nyakobi alias Nasubo Saulo. The grant issued to him was confirmed on 23rd June, 2014.
2. On 13th October, 2015 the Applicant filed a summons for revocation of the grant alleging that the same was obtained secretly without involving other beneficiaries and that the Respondent failed to disclose to the court the existence of other beneficiaries.
3. This matter proceeded by way of oral evidence. Through that evidence it emerged that the Applicant is the brother of the deceased meaning that the deceased is an uncle to the Respondent. There is also evidence that there is bad blood between the Applicant and the Respondent.
4. The question is whether the Applicant has established grounds for revoking the grant issued to the Respondent. In an affidavit (Form P& A 5) sworn on 2nd May, 2013 in support of petition for letters of administration intestate, the Respondent averred that he was the only beneficiary who survived the deceased. In the letter written by the Chief of Bukhayo Central Location to the Deputy Registrar of this Court, it is indicated that the Respondent is the stepson of the deceased.
5. It has now emerged through the evidence adduced in this Court both by the Applicant and the Respondent that the deceased is the brother of the Applicant. It has also emerged that the Respondent has brothers. All these point to the fact that the Respondent was not the only legally recognised beneficiary who survived the deceased as averred at the time of the filing this matter.
6. Section 76 of the Law of Succession Act, Cap 160 provides for the grounds for revocation or annulment of a grant of representation as follows:

“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 order or allow; 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.”

7. The grant herein was made upon the concealment of material facts by the Respondent. It was thus a grant obtained fraudulently and Section 76(b) is applicable to it. For that reason alone, the grant of representation attracts annulment.

8. There is another reason why the application should succeed. The deceased is said to have died without a spouse or child. Section 39 of the Law of Succession Act, Cap 160 provides the order of priority where a deceased left no surviving spouse or children. It states:

“39.(1) Where an intestate has left no surviving spouse or children, the net intestate estate shall devolve upon the kindred of the intestate in the following order of priority—

(a) father; or if dead

(b) mother; or if dead

(c) brothers and sisters, and any child or children of deceased brothers and sisters, in equal shares; or if none

(d) half-brothers and half-sisters and any child or children of deceased half-brothers and half-sisters, in equal shares; or if none

(e) the relatives who are in the nearest degree of consanguinity up to and including the sixth degree, in equal shares.

(2) Failing survival by any of the persons mentioned in paragraphs (a) to (e) of subsection (1), the net intestate estate shall devolve upon the State, and be paid into the Consolidated Fund.”

9. There was no evidence adduced to show that the parents of the deceased and the Applicant are still alive. A reading of the cited provision shows that the Applicant and his brothers take priority over the Respondent. The Respondent could only inherit from the estate of the deceased if his father (the Applicant) had predeceased him. He never obtained his consent before moving the court for a grant of representation. His actions were therefore misadvised.

10. Before signing off, I need to tell the Respondent that he needs to mend ways with his father. Much as he speaks ill of his father, his father remains the holder of the knife and the yam. As for the Applicant, he should remember that the Respondent remains his blood and there is nothing he can do about it. He needs to talk to his child for the sake of peace and harmony in his family. The Applicant and the Respondent ought to mend bridges for only a cohesive family can lead to a stable society.

11. From what I have just stated, it goes without saying that this is not a matter in which costs should be awarded. Each party will therefore meet own costs of these proceedings.

12. For avoidance of doubt, the application succeeds and the grant confirmed on 23rd June, 2014 is revoked. The Applicant/Objector Saulo Barasa Nyakuri is appointed the administrator of the estate of the deceased Nasubo Nyakobi alias Nasubo Saulo.

Dated, signed and delivered at Busia this 31st day of January, 2017.

W. KORIR,

JUDGE OF THE HIGH COURT