



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO 1441 OF 2011

IN THE MATTER OF THE ESTATE OF KIRUMBA MUGOCHI (DECEASED)

RULING

1. The ruling before this court is in respect to an application dated 14th July 2011 by the applicant seeking the following for orders that;

i. That the grant of letters of administration made to Helina Wanja Kirumba on 30th June 2003 be revoked and or annulled on the grounds that the said confirmed grant was obtained fraudulently by the making of false statement and concealment of material facts.

ii. That the amended confirmed grant and letters of administration made to Ndegwa Ngage on 17th September 2010 be revoked and or annulled.

iii. That the costs of this application be provided for.

2. The application is brought under Section 76 a, b and c of the law of Succession Act Cap 160 Laws of Kenya, Rules 44 (1) and (2) and Section 47 of the Probate and Administration Rules.

3. The application was based on grounds that the proceedings for obtaining the grant were defective in substance and that the certificate of confirmation of grant of letters of administration were obtained fraudulently and by the concealment of material facts to the court.

The applicant, Ruth Nyambura Kirumba filed a supporting affidavit dated the 4th July 2011 in support of her application for revocation. She avers that she is a widow of the deceased. The deceased died on 9th June 2000 and letters of administration were made to Helina Wanja Kirumba by the Chief Magistrate Courts at Thika in Succession Cause No. 7 of 2003 on 30th June 2003. The grant was subsequently confirmed on 28th March 2007. The confirmed grant was amended to indicate the new administrator as Ndegwa Ngage. An application to rectify the confirmed grant was filed on 20th August 2010 to include property, Plot No. 27 Chomo and the same allowed by the court. The applicant states that the amendment and confirmation of the grant were an attempt to defraud the applicant and other beneficiaries to the estate of the deceased and that the added administrator, Ndegwa Ngage is a stranger to the estate of the deceased. That she is widow of the deceased a fact Helina did not disclose.

5. The administrator, Helina Wanja Kirumba filed a replying affidavit dated the 27th of October 2011. She avers that the grant of letters of administration and the confirmation were not obtained by fraud or concealment of any material facts from the court. She states that the amendment of the confirmed grant was lawfully made to include plot number 27 Chomo and that the inclusion of the name, Ndegwa Ngage was a typographic error made by the court registry. She prays that the application by the applicant be

dismissed as it lacks any merit.

6. The court directed on the 14th of March 2017 that the parties file written submissions. The applicant filed her submissions on 29th May 2017. She submitted that the deceased had two wives, the applicant and the respondent. The respondent secretly filed Thika succession cause number 7 of 2003 and completely left out the applicant's house. That the grant was therefore obtained fraudulently by making a false statement or concealment from the court something of material to the case. That the respondent in a bid to defraud the applicant included a stranger to Ndegwa Ngage as the new administrator but later she conceded that the said Ndegwa Ngage is a stranger in the proceedings. That the respondent has not denied that the deceased had a second house and that her house was completely left out.

DETERMINATION

7. Having considered the application the affidavits and submission, the law the issue for determination is whether the court should revoke the grant issued to the respondent. The Law of Succession Act Cap 160 provides for situations where the court has the power to revoke any granted issued with respect to the estate of a deceased person. Section 76 reads;

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.

8. The respondent in her replying affidavit did not dispute the fact that the applicant was a second wife. She however did point out that the mention of Ndegwa Ngage as an administrator in the confirmed grant was a typing error by the court registry; no attempt has been made to rectify the said error. The applicant in her supporting affidavit states that she is a widow to the deceased and as such a dependent to the estate of the deceased as per the provisions of Section 29 (a) which provides that ,***“the wife or wives, or former wife or wives, and the children of the deceased whether or not maintained by the deceased immediately prior to his death”***

9. The provisions of Section 76 (b) empowers this court to revoke a grant with respect to the estate of the deceased if the grant was obtained by fraudulent means or by concealment of material facts essential to the case. The respondent concealed material facts. The court is thus inclined to revoke the confirmed grant issued to Helina Wanja Kirumba and Ndegwa Ngage.

i. That the grant of letters of administration made to Helina Wanja Kirumba on 30th June 2003 is hereby revoked on the grounds that the said confirmed grant was obtained fraudulently by the making of false statement and concealment of material facts.

ii. The amended confirmed grant and letters of administration made to Ndegwa Ngage on 17th September 2010 is hereby revoked.

The applicant and respondent are required to file a fresh petition with regard to the estate of the deceased within 45 days from the date of this ruling. Costs be in the cause. It is so ordered.

Dated signed and delivered this 27th Day of July 2017

R. E. OUGO

JUDGE

In the presence of;

Miss Njogu h/b for Mr. Enonda For the Applicant

Absent Respondent

Ms. Charity Court Clerk