



**REPUBLIC OF KENYA**

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

**SUCCESSION CAUSE NO. 1736 OF 2008**

**IN THE MATTER OF THE ESTATE OF ERIC CAIRNS HANNA (DECEASED)**

**RULING**

1. The deceased herein died on 15<sup>th</sup> July 2007. A letter from the Chief of Kileleshwa Location, dated 8<sup>th</sup> February 2008, indicates that his relatives were unknown and that the person next close to him was one Ferdinand Lukunga Chumba. The said Ferdinand Lukunga Chumba then petitioned for representation intestate to the estate of the deceased. He explains in an affidavit sworn in support that the deceased's wife had died in 2005, and the couple had no children and no known relatives. He claimed to have been the deceased's closest friend and confidant, and undertook to collect and gather the estate, pay debts and liabilities. His estate was said to comprise of money in a bank account, shares in a blue chip company, four pieces of artwork and shares in International Homes Limited. The liabilities of the estate were listed as funeral expenses and hospital bills.
2. A grant of letters of administration intestate was made to the petitioner, Ferdinand Lukunga Chumba, on 20<sup>th</sup> January 2009. The grant was confirmed on 2<sup>nd</sup> March 2010, on an application dated 3<sup>rd</sup> November 2009. The amount of assets had increased from that stated in the petition to shares in International Homes Limited, Kenya Furniture Rentals Limited, Makao Limited and Kenya Commercial Bank, and proceeds of treasury bills, money in various bank accounts and LR No. 209/308/1. The entire estate was devolved wholly upon the administrator.
3. The confirmation of the grant prompted the filing of an application for revocation of the grant dated 30<sup>th</sup> May 2012, by Jackson Kimeu Mulinge, on the grounds that debts owed to him and a company he co-owned with the deceased called Kenya Furniture Rentals Limited had not been disclosed, or had been concealed from the court. The debt was put at Kshs. 15, 786, 000.00. He pointed to pending winding-up proceedings in respect of the said company. He argued that the administrator ought to have known of those facts and should have disclosed the debt and made provision for it. He described the administrator as a total stranger and wondered whether he would be in a position to settle the debts owing to him by the estate.
4. In reply the administrator concedes that he did know of the deceased's surviving close relatives, being a sister called Hellen who lived in Australia and a brother called Richard Hanna who resided in Northern Ireland. He avers that it was the deceased's brother who proposed that he, the administrator, applies for representation to the estate.
5. Jackson Kimeu Mulinge, the applicant, died on 17<sup>th</sup> June 2014. His sons, James Mutua Mulinge and Patrick Mutinda Mulinge, obtained limited representation to his estate *ad litem* in Machakos HCSC No. 332 of 2014, and curiously also in this cause on 16<sup>th</sup> June 2015, ostensibly to clothe them with authority to prosecute the pending revocation application.

6. Directions were given on 6<sup>th</sup> November 2013 for disposal of the application by way of written submissions. There was compliance with the direction for both sides have filed their respective written submissions. I have read them and noted the arguments advance therein.

7. The revocation application is founded on section 76 of the Law of Succession Act, Cap 160, Laws of Kenya. That provision grants the court discretion to revoke grants of representation on any of the three general grounds. The first ground is where the grant is obtained through defective process or where the process is attended by fraud, misrepresentation or concealment of matter from the court. The second ground relates to the process of administration, and a grant would be revoked where the administrator fails to have the grant confirmed within the time stipulated by the law, or lacks diligence in the manner he manages the estate, or fails to render accounts as and when required of him by the law. The last ground is where the grant has become useless or inoperative for any reason.

8. The applicant complains that there was no disclosure of the debt owed to him by the estate. in response to the applicant, the administrator makes very startling revelations, that contrary to what he pleaded when he sought representation, that the deceased had not been survived by any known close relative, and that he was the only closest person to him, the deceased had infact siblings that were known to the applicant and some of who had allegedly authorized him to seek representation to the estate. Curiously, he has not provided any proof of the alleged authority.

9. The law on applications for representation in intestacy is clearly set out in the Law of Succession Act. It is set out in section 51. In cases of intestacy, the petitioner ought to disclose the surviving spouse, children and siblings of the deceased. Section 66 gives priority to siblings of the deceased over total strangers with respect to representation.

10. Clearly, there was non-disclosure in this case, that the siblings of the deceased were still alive, and equally concealment of their existence. This amounted to misrepresentation. It is fraudulent to the extent that it was stated that the petitioner did not know of any relatives of the deceased. To my mind he speaks from both sides of his mouth, to effect that he did not have any relatives of the deceased, and that he knew a sister and a brother. This is the making of deceit and dishonesty.

11. I have mentioned above that section 66 gives priority to siblings of the deceased over non-relatives in administration. Rule 7(7) of the Probate and Administration Rules provide that persons with a lesser right to administration must obtain the consent of the persons with a prior right to administration. The administrator did not obtain any such consent or renunciation by the persons with priority, he instead lied to court that he knew of no relatives of the deceased.

12. The grant herein was no doubt obtained through a defective process, by an individual who was not entitled to representation over the known relatives of the deceased. The said individual has also demonstrated that he used fraud, misrepresentation and concealment as means to obtain representation. It is for such that grants are revoked. Administrators are persons who occupy portions of trust, they must inspire confidence. A dishonest and deceitful person can inspire no confidence whatsoever.

13. I note that the applicants are creditors. They are entitled to appointment under section 66 of the Act. They would have priority over the administrator herein.

14. I am moved to make the following final orders –

**(a) That the grant herein made on 20<sup>th</sup> January 2009 to Ferdinand Lukunga Chumba is hereby revoked;**

**(b) That as a direct consequence thereof the orders made on 2<sup>nd</sup> March 2010 confirming the said grant are hereby vacated, and the certificates of confirmation of grant issued on 3<sup>rd</sup> March 2010 and 16<sup>th</sup> April 2010 are hereby cancelled;**

**(c) That I hereby appoint James Mutua Mulinge and Patrick Mutinda Mulinge administrators of the estate of the deceased, and a grant of letters of administration intestate shall issue to them accordingly;**

**(d) That the fresh administrators shall apply for confirmation of their grant in the next forty-five days, but only after they have traced the surviving siblings of the deceased or their survivors and obtained their relevant consents;**

**(e) That the matter shall be mentioned after forty-five (45) days for compliance; and**

**(f) That the applicants shall have the costs of the application.**

**DATED, SIGNED and DELIVERED at NAIROBI this 29<sup>TH</sup> DAY OF SEPTEMBER, 2017.**

**W. MUSYOKA**

**JUDGE**