

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 226 OF 2013

IN THE MATTER OF THE ESTATE OF JOSEPH KANGARI MUHU (DECEASED)

RULING

1. The application that I am supposed to be determining is dated 13th March 2015. It seeks revocation of the grant of representation made to Sarah Wangari Kangari and James Muhu Kangari, and revocation too of the certificate of confirmation of the grant. The applicant, Sarah Mweru Muhu, is the mother of the deceased and the executor of the will of the deceased's father. The respondent administrators are the widow and son of the deceased, respectively. The grounds upon which it is premised are set out on the face of the application. It is alleged that the grant was obtained through a defective process founded on fraud and false information. It is further averred that administrators seek to administer assets that do not form part of the estate of the deceased as some belong to the applicant or to the estate of the deceased's father. It is alleged that the grant herein is being used to frustrate the administration of the estate of the deceased's father. It is stated that the grant was confirmed prematurely before the assets making up the estate of the deceased had been properly ascertained, and that the grant had become useless on account of lack of clarity on ownership of the assets to be administered. The affidavit drawn and sworn in support of the application dwells largely on the process of confirmation of the said grant.

2. The reply to the application is by Sarah Wangari Kangari, through her affidavit sworn on 8th May 2015. She avers that when she sought representation she followed the correct procedure. She asserts that the assets distributed at confirmation belonged to her husband. She mentions that criminal proceedings had been maliciously brought against her merely to paint her in bad light.

3. The application for revocation is premised on section 76 of the Law of Succession Act, Cap 160, Laws of Kenya. Under that provision the court may revoke a grant of representation on three general grounds. The first is where there were problems with the process of obtaining the grant – such as where the process was defective or tainted by fraud, misrepresentation and concealment of material information. Secondly, where there are difficulties with administration – such as where the administrator fails to apply for confirmation of the grant within the period allowed in law, or fails to diligently administer the estate, or to render accounts as and when required. The last ground is where the grant has become useless and inoperative on account of changed circumstances.

4. I have carefully studied the application as against the first general ground. Even though the body of the application alleges that the grant was obtained through a defective procedure attended by fraud and misrepresentation, the affidavit in support of the application makes no reference whatsoever to any defects in the process nor to any fraudulent acts or misrepresentation or concealment of matter. Quite clearly, the applicant has made no effort whatsoever to demonstrate that the grant was obtained improperly.

5. Regarding the second general ground, the applicant appears to suggest that there were problems with administration. She faults the confirmation process on account of the fact that some of the assets distributed did not form part of the estate, for they either belonged to her or to the late father of the deceased. My reading of section 76 of the Act is that the only problems with administration of the estate that would warrant revocation of a grant are where there has been failure to have the grant confirmed within the time stipulated, lack of diligence in administration or failure to account when required to do so. The applicant has not demonstrated that the administrators have failed to have the grant confirmed, or to proceed diligently with administration, or to render accounts as when required. She appears to be arguing that grant ought to be revoked because the administrators during confirmation sought to distribute assets

that did not belong to the estate. In my view that is neither here nor there. What ought to be clear is that that is not one of the grounds set out in section 76 for revocation of a grant. In any event, whether these assets belong to the estate or not is a moot point. There is a dispute on it; the administrators assert that they are estate assets, while the applicant argues that they are not. That is not a matter for determination in a revocation application. If the assets do not belong to the estate, there would be no way that the administrators will implement the certificate of confirmation of grant so long as the assets are not in the name of the deceased.

6. The third ground is where the grant has become useless. The applicant has not demonstrated in what respect the grant might have become useless. It has not been shown to me that the deceased did not own any assets. Put differently, it has not been demonstrated that the estate does not have any assets which can be administered. There is therefore no proof that it is useless and serves no purpose.

7. On the whole, a case has not been made out for revocation of the grant on record.

8. On the prayer for revocation of the certificate of confirmation of grant, I wish to state that section 76 does not make any provision for dealing with orders made by the court at confirmation of grant. The provision only concerns the processes of obtaining grants and administration of the estate. The only reference to confirmation in section 76 is with relation to failure to apply for it. There is no provision that a certificate of confirmation is to be revoked under section 76. The discretion given to the court under section 76 does not include that to revoke or annul or cancel certificates of confirmation of grant. In the circumstances, I do not find basis to revoke the certificate of confirmation of grant herein.

9. The certificate of confirmation of grant is nothing more than a formal expression of the orders made at the confirmation of grant. A party unhappy with the confirmation orders is at liberty to move the court appropriately to either have the confirmation orders reviewed or set aside. The revocation of the certificate extracted from the confirmation orders would leave the confirmation orders intact, as the said certificate is nothing more than a document drawn to provide proof of the making of the orders; it is itself not the order. When the certificate is cancelled, the orders remain intact and enforceable until they are set aside or reversed or varied or reviewed.

10. It is common ground that the respondents herein are widow and son, respectively, of the deceased, while the applicant is the mother of the deceased. Section 66 of the Law of Succession Act indicates that preference is to be given to certain persons with respect to entitlement to administration. Prior right is given to surviving spouses, followed by surviving children. Parents of a deceased person would only be considered where the deceased was not survived by spouse or children, or where the spouse or children are unsuitable. The administrators herein therefore have prior right to administrator of the estate of the deceased over the applicant. It has not been demonstrated that the two are unsuitable for appointment. There are allegations of criminal charges against the widow with respect to some of the estate assets. It has not been demonstrated that the criminal case has terminated with a conviction of the widow. It is a cardinal principle of criminal law that a person is innocent until proven guilty. The mere fact that she faces these charges does not make her unsuitable, until such time that the criminal proceedings are concluded, and she is convicted of the offence charged.

11. I believe that I have said enough. The application herein dated 13th March 2015 is without merit, and I shall accordingly dismiss it. The administrators shall have the costs thereof.

DATED, SIGNED and DELIVERED at NAIROBI this 29TH DAY OF SEPTEMBER, 2017.

W. MUSYOKA

JUDGE