



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

SUCCESSION CAUSE NO. 484 OF 2001

*(IN THE MATTER OF THE ESTATE OF KARIUKI NJAMA ALIAS KARIUKI S/O NJAMA
(DECEASED))*

NGUNJU KARIUKI.....APPLICANT

VERSUS

JOSEPH MWANGI NJAMA.....RESPONDENT

JUDGMENT

By a summons for revocation of grant dated 19th May, 2015 and filed in this court under **section 76** of the **Law of Succession Act, cap. 160**, the applicant sought to have the grant made to the respondent on 26th April, 1994 in respect of the estate of Peter Kariuki Njama alias Kariuki son of Njama (deceased) revoked mainly on the ground that the grant was obtained fraudulently by the making of a false statement and by concealment from the court of something material to the case.

In the affidavit she filed in support of the summons, the applicant swore that the deceased died on 27th July, 1984 and that she was the only child and hence the sole survivor of the deceased. However, in spite of these facts, the respondent petitioned for and obtained temporary letters of administration of the deceased's estate in the **Nyeri Principal Magistrates Court Succession Cause No. 272 of 1992** without any reference to the applicant at all. The temporary grant was subsequently confirmed and the deceased's entire estate comprising land parcel **Title No. Kirimukuyu/Mutathini/56** measuring 4.5 acres was transferred and registered in name of the respondent as its absolute proprietor.

On 5th June, 2012, the applicant made a petition of her own for letters of administration of the same deceased's estate, apparently in ignorance of the fact that the respondent had not only been issued with the grant for administration of the deceased's estate but also that the grant had been confirmed and the estate transferred to him. Nevertheless, the applicant's petition was granted and the grant of the letters of administration intestate was confirmed on 29th May, 2014. Being the only child of the deceased, the latter's estate was transferred to her absolutely.

The respondent opposed the summons and swore a replying affidavit in that regard; the affidavit is indicated to have been sworn on 7th October, 2016 but, somehow, it was filed in court on 6th October, 2016!

Be that as it may, the respondent swore that the applicant was his mother and that she had authorised him to petition for grant of letters of administration of her father's estate. He proceeded accordingly and obtained temporary letters of administration which, as noted, were subsequently confirmed and the deceased's estate transferred to him.

The hearing of this summons proceeded by way of oral evidence and from what I gather, the material facts were not contested. For instance, it was not in dispute that the deceased died intestate on 27th July, 1984; it was not in dispute that he was survived by the applicant as his only child; it was also common ground that the respondent is a son to the applicant and therefore a grandson the deceased. The extent of the deceased's estate was also agreed to be the 4.5 acres of land known as **Title No. Kirimukuyu/Mutathiini/56**.

Based on these facts the law applicable to the administration of the deceased's estate is, no doubt, the Law of Succession Act; according to **section 51** of that Act an application for grant must, among others, include information on the relationship of the applicant to the deceased (if any) and in case of intestacy, as was the case here, the names and addresses of all surviving spouses, children, parents, brothers and sisters of the deceased. The application must also give information as to the full inventory of all the assets and liabilities of the deceased.

In the petition filed by the respondent in the magistrates' court, the respondent described himself as the son of the deceased and also as the deceased's sole survivor. He never made any reference to that applicant at all even though he was aware that she was the deceased's daughter and his only child. It follows that the respondent's depositions in the affidavit in support of the petition for grant of letters of administration were obviously false.

In the words of **section 76 (b)** of the **Law of Succession Act**, it can be concluded in these circumstances, that the grant was obtained fraudulently by the making of a false statement, to the extent that the respondent described himself as the deceased's son and his sole survivor when he knew that he was not. Under the same provision of the law, it can also be said that, by omitting to disclose that the deceased was survived by the applicant who was his only child, the respondent obtained the grant fraudulently by the concealment from the court of something material to the case. Similarly, it is plausible to argue that the grant is also revocable under **section 76(c)** in the sense that it was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant.

The respondent testified that he petitioned for and obtained the grant of letters of administration with the blessings of the applicant; however, there was no evidence of any such authority and even if it had been given there was no reason why the respondent misrepresented himself as the deceased's son and only survivor and omitted to disclose the existence of the applicant at all.

One other thing I noted from the grant made to the respondent is that it was only a temporary grant issued under **section 49** of the Act. It is clear on its face that it was limited to the collection of the deceased's assets and payment of his debts, and more crucial, it was valid for six months only. This sort of grant could not be confirmed because **section 71(1)** of the Act provides that it is only after six months that a grant may be confirmed; it states:

71. Confirmation of grants

(1) After the expiration of a period of six months, or such shorter period as the court may direct under subsection (3), from the date of any grant of representation, the holder thereof shall apply to the court for confirmation of the grant in order to empower the distribution of any capital assets.

This provision of the law contemplates that it is only a full grant that may be confirmed and even then, it can only be confirmed after the expiry of six months except that in certain cases, which have been expressly stipulated in **section 76(3) (a) and (b)**, the grant may, on application to court, be confirmed before the expiry of that period. The applicant in such an application must demonstrate that there is no dependant, as defined by **section 29 of the Act**, of the deceased or that the only dependants are of full age and have consented to the application and that it would be expedient in all circumstances of the case so to direct

If the grant made to the applicant was valid for six months only, there is no way it could be validly

confirmed after six months because there was no grant after this period. Again, it could not be confirmed before the expiry of six months because there was no proof of the existence of the circumstances envisaged in section 76 (3) (a) and (b).

All in all, I am satisfied that the applicant has made out a case for revocation or annulment of the grant of letters of administration made to the respondent in respect of the estate of late Kariuki Njama alias Kariuki son of Njama. I am satisfied too that being the only child and sole survivor of the deceased, she is entitled to the deceased's estate as the sole beneficiary. Accordingly, her summons dated 19th May, 2015 for revocation of grant is allowed and for completeness of record I make the following orders:

1. The temporary grant of letters of administration made to the respondent in **Nyeri Principal Magistrates' Court Succession Cause No. 272 of 1992** on 26th April, 1994 and subsequently confirmed on 29th September, 2004 is hereby annulled and/or revoked.
2. The transfer and the registration of the respondent as the absolute proprietor of **Title No. Kirimukuyu/Mutathini/56** is hereby cancelled.
3. The District Land Registrar, Nyeri is hereby directed to cancel the registration of the respondent as the absolute proprietor of **Title No. Kirimukuyu/Mutathini/56** and instead register the applicant as the absolute proprietor of this parcel of land based on the certificate of confirmation of grant issued to her on 29th May, 2014.
4. There shall be no orders as to costs

It is so ordered.

Signed, dated and delivered in open court this 22nd September, 2017

Ngaah Jairus

JUDGE