



REPUBLIC OF KENYA
HIGH COURT AT NAIROBI
PROBATE AND ADMINISTRATION DIVISION
SUCCESSION CAUSE NO. 1165 OF 1991

IN THE MATTER OF THE ESTATE OF ELIZAPHAT MWAURA KARANJA (DECEASED)

SOLOMON MWANGI MWAURA.....APPLICANT

VERSUS

JACKSON KURIA MWAURA.....RESPONDENT

R U L I N G

1. In an Application dated 12th June, 2014, the Applicant herein filed summons for Revocation of Grant under **Section 76 of the Law of Succession Act (Cap. 160)**. The deceased herein died on 26th May, 1990 and a Certificate of Confirmation of Grant was made on 1st July, 1992 to the Respondent. With the consent of all the beneficiaries apart from the Respondent, the Applicant now seeks to revoke the Certificate of Confirmation of Grant made to the Respondent on grounds that:

- a. The grant was obtained fraudulently by the making of a false statement and by concealment from the court of material facts to the case.
- b. The respondent deliberately misled the court that he was the only beneficiary of the estate whereas there were other children of the deceased.

2. The Application is supported by the Affidavit of the Applicant wherein he deponed that the Respondent obtained the grant by way of fraud and by the concealment from the court of the fact that neither the applicant nor the other beneficiaries were consulted or requested to execute any consent form to allow the Respondent to take out letters of administration. The Applicant deponed that the Respondent obtained the grant in 1992 without informing the applicant and the other beneficiaries and continued to operate in secrecy and to their exclusion; and that neither the Applicant nor the other beneficiaries agreed on the mode of distribution to award the whole of the assets of the deceased to the Respondent.

3. The Respondent filed a response dated 25th of July, 2014 to the Summons for revocation of grant. In his Affidavit, the Respondent deponed that his petition for the letters of administration was made with the knowledge and full participation of all the beneficiaries as they wished to pursue a civil case in respect of the assets of the deceased which had been transferred fraudulently.

4. The Respondent deposed that the deceased had subdivided the family land that is **LOC.5/GAICHANJIRU/384** amongst the beneficiaries and that have all been using their individual portions. That the subdivisions have yet to be completed because the beneficiaries have refused to pay for

the process. The Respondent urged that there is no need to revoke the grant in the circumstances of the case. However, if the parties so chose, the orders conferring grant can be reviewed to give each beneficiary their individual portion.

5. The application was dispensed by way of written submissions. The Defendant filed its submissions on 11th August, 2014, while the Plaintiff did so on 15th December, 2016.

6. The Applicant submitted that the Respondent failed to include any beneficiary, and listed himself as the sole heir in the estate. He thus misled the Court in allowing him to inherit all the assets of the deceased to the peril and prejudice of the other fourteen (14) dependants. It was submitted that if indeed the Respondent did petition the Court for Grant for the purposes of filing a civil claim, he ought to have produced in Court a Limited Grant as per Section 54 of the Law of Succession Act in the form of the Grant of Letters of Administration Ad Litem. The objection to the revocation is therefore a callous attempt by the respondent to frustrate the proper petitioning for letters of administration to conform to the legal and procedural requirements. His response does not express the wishes of the beneficiaries as it is both evasive and full of mere denials and cannot be said to be plausible.

7. The Applicant submitted that the Court confirmed the grant as sought in the ex-parte chamber summons dated 16th June 1992 without material facts as the same fall short of the threshold required under **Section 71 of Law of Succession Act**. Further that the grant issued on 15th January 1992 was irregularly confirmed on 1st July 1992 as the 6 months statutory time had not lapsed and no evidence was shown in court that the Respondent applied for leave to confirm the grant before the expiry of six (6) months as per **Section 71(3) of the Law of Succession Act**.

8. The Respondent submitted that he and the Applicant are brothers and that the reason why the titles have yet to be given to the beneficiaries is because they have not financed the process of subdivisions. The Respondent had been registered as the sole proprietor for the sole intention of continuing subdivision to have the land registered in the beneficiaries' names as directed by the deceased. It was his submission that the matter can be settled by an application for review and not by revocation, that has the effect of commencing the entire process *de novo*. The Respondent submitted that there is no need to revoke the grant in the circumstances of the case but if the parties so wish the orders conferring the grant can be reviewed to give each beneficiary their individual portion.

9. The key issue for determination is whether the Applicant has made out a case to warrant the revocation of the Grant of Letters of Administration made and confirmed to the Respondent herein. In that regard, **Section 76 of the Law of Succession Act** provides for the alteration and revocation of Grants. It states that:

“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 has ordered or allowed; 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

(iv) That the grant has become useless and inoperative through subsequent circumstances.”

10. The Applicant argues that the grant issued to the Respondent and which was confirmed was granted under irregular and defective proceedings. The Respondent, moved the court by way of a Petition for Letters of Administration Intestate on 28th September, 1991 and in the affidavit sworn in support of the Petition, he listed himself as the sole survivor of the deceased. The grant was subsequently confirmed on 1st July, 1992 with the Respondent listed as the sole heir to the property described as follows:

LOC.5/GAICHANJIRU/KARITI SUB-LOC./384

a. PLOT NO. 22 A KARITI MARKET GAICHANJIRU LOCATION

11. The information that must be disclosed in an application for grant in cases of intestacy is provided for under **Section 51(2)(g)** of the **Law of Succession Act**. The provision states that:

“An application shall include information as to – in cases of total or partial intestacy, the names and addresses of all surviving spouses children, parents, brothers and sisters of the deceased, and of the children of any child of his or hers then deceased.”

12. **Rule 7(1)(e)(i) of the Probate and Administration Rules** supplements **Section 51(2)(g)** and reads as follows:

“... the application shall be by petition... supported by affidavit... containing so far as they may be within the knowledge of the applicant, the following particulars – in cases of total or partial intestacy the names, addresses mental state and description of all surviving spouses and children of the deceased, or, where the deceased left no surviving child, like particulars of such person or persons who would succeed in accordance with Section 39(2) of the Act.”

13. In his Affidavit, the Respondent deponed that his petition for the letters of administration was made with the knowledge and full participation of all the beneficiaries as they wished to pursue a civil case in respect of the assets of the deceased which had been transferred fraudulently. No evidence has been availed in support of this allegation. Indeed, in the event the grant was sought in pursuit of a civil case, the appropriate application would have been for special limited Grant of Letters of Administration.

14. **Rule 26 of the Probate and Administration Rules** relates to the requirements attached to Grants of letters of administration as regards notifications and consents; and states:

(1) Letters of administration shall not be granted to any applicant without notice to every other person entitled in the same degree as or in priority to the applicant.

(2) An application for a grant where the applicant is entitled in a degree equal to or lower than that of any other person shall, in default of renunciation, or written consent in Form 38 or 39, by all persons so entitled in equality or priority, be supported by an affidavit of the applicant and such other evidence as the court may require.

(3) Unless the court otherwise directs for reasons to be recorded, administration shall be

granted to a living person in his own right in preference to the personal representative of a deceased person who would, if living, have been entitled in the same degree, and to a person not under disability in preference to an infant entitled in the same degree.

15. The effect of failure to comply with Rule 26 of the Probate and Administration Rules was discussed in **Al-Amin Abdulrehman Hatimy v. Mohamed Abdulrehman Mohamed & another [2013] eKLR** where the court held that the Law of Succession by virtue of Rule 26 requires that any petition for issue of a Grant must be accompanied by a consent duly signed by all persons entitled in the share in the same estate. The duty of a litigant is to make a full and fair disclosure of the material facts.

16. In sum the Respondent made an application to the court for Grant of Letters of Administration wherein he indicated that he was the sole heir to the estate of the deceased. He did not disclose to court that the deceased left other beneficiaries who were his siblings. The non-disclosure of all beneficiaries of the deceased's estate amounted to a significant defect in the proceedings leading up to the making of the grant. The non-disclosure of the applicants, whether inadvertent or otherwise, amounted to a concealment of important matter from the court and it had the effect of a misrepresentation of the true state of affair to the court.

17. I also note that from 1992 to date the Administrator has not proceeded diligently with the administration of the estate since he has not distributed the estate yet. From the foregoing I am satisfied that a case has been made for revocation of the grant made on 15th January 1992 and confirmed on 1st July 1992. I therefore make the following orders:-

- (a) That the grant made on 15th January 1992 and confirmed on 1st July, 1992 be and is hereby revoked.
- (b) A fresh grant be and is hereby made to the Applicant, Solomon Mwangi Mwaura together with the Respondent Jackson Kuria Mwaura as co-administrators.
- (c) The new administrators shall proceed with speed to apply for confirmation of the Grant and distribution of the estate.

DATED, DELIVERED AND SIGNED AT NAIROBI THIS 23rd DAY OF November, 2017.

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L. A. ACHODE

JUDGE