



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT BUNGOMA
PROBATE AND ADMINISTRATION CAUSE NO. 102 OF 1998

IN THE MATTER OF THE ESTATE OF WAMALWA NANG'ENDO.....DECEASED

BETWEEN

MOSSY MUCHANGA NANG'ENDO.....PETITIONER

AND

HUDSON NYONGESA JUMA.....OBJECTOR

JUDGMENT

This succession cause revolves around the estate of one **Wamalwa Nangendo** who is said to have died on the 17th of May 1974 at Sigalame. The petitioner moved the court for grant of letters of administration in July, 1998. What is interesting is that his application was neither stamped nor paid for as no receipt is on the file. The petition was filed in the Principal Magistrates Court. The matter was gazette on the 7th of August 1998 and on the 17th March, 1999 grant of letters of administration intestate was issued.

In the application the petitioner Mossy Khaemba Muchanga gives his name as the only survivor of the estate. He did not state the relationship he had with the deceased nor did he obtain consent from any other person who has an equal right to the estate or ranks in priority to him in the application for grant of representation.

In 1999 two persons now deceased brothers of the deceased are alleged to have written letters of consent to the issuance of a grant in favour of the petitioner.

The objector is a cousin of the petitioner. Their father's now deceased were brothers. The objectors father filed for revocation of the grant herein on the 8th of November 2002 drawing the courts attention to the fact that the deceased herein was his brother and his consent had not been obtained. The grant here had been confirmed on the 30th of January 2000.

At the hearing other than the objector and the petitioner no other witnesses were called. This matter first came to court in 1998, 17 years ago and for one reason or the other parties have not been in a hurry to dispose of the same necessitating this court to insist on hearing the same.

The petitioner's case is that he stayed with his childless uncle until his death. The uncle bequeathed the land subject of this petition measuring approximately 12 acres to him and he subsequently sold 4 acres. Although he does not stay on the land, his father and thereafter him have continued to cultivate the same.

On the other hand it is the objector's case that after the demise of the deceased his surviving brothers who were 3 including each of their father's sat and agreed to subdivide the land into 3 so that each of the deceased brother would get 4 acres, but the petitioner secretly came to court without involving his uncles.

The issue before court for now is whether the grant before court was obtained procedurally and whether or not the same ought to be revoked.

It must be admitted that 17 years is a long time and the practice in our courts have evolved from the casual acceptance of applications in succession matters to a more sober and serious scrutiny of petitioners and what they offer in support of their petitions.

Courts now scrutinize applications due to various factors including the fact that courts have many a times revoked grants because the same have been obtained by concealment of important facts and the fact that courts are increasingly getting fraudulent documents.

The current practice includes;

1. **Authenticating the original death certificate**
2. **Authenticating original title document**
3. **Certificate of official search**
4. **Letter from the area chief identifying survivors/beneficiaries of the estate.**
5. **Identity card of the petitioner**
6. **Consent from all beneficiaries and**
7. **Any other document in support of an asset.**

Notably missing in the petition herein are:

- i. **Certificate of official search**
- ii. **Letter from the chief giving details of all survivors of the estate**
- iii. **Consent signed by all survivors.**

There are consents of two but these were filed after the application. The said persons are since dead and there is no way of authenticating their signatures.

Section 39 (1) of the Law of Succession Act gives people who shall in the absence of spouse or children benefit from the estate of a deceased. In this instance it would be the brothers of the deceased in equal shares.

Section 66 of the same Act also gives a guide on who should apply for grant of letters of administration.

Having therefore considered the above requirement and the scanty evidence adduced by both sides the court has in the interest of justice arrived at the conclusion that the petitioner failed to comply with the requirements of the law, the application for the limited grant was procedurally and substantially lacking and will therefore be annulled. The petitioner is directed to obtain all relevant consents, obtain the chief's letter giving names of all survivors of the estate. Who gets what will follow at the distribution. Stage where adequate evidence in support of claims if any ought to be adduced.

The Dated at Bungoma this 28th of January 2016.

ALI-ARONI

JUDGE.