



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
FAMILY DIVISION
SUCCESSION CAUSE NO.1607 OF 2014

IN THE MATTER OF THE ESTATE OF IBRAHIM NDUNG'U KIMANA (DECEASED)

LUCY NJERI WAWERU.....1ST APPLICANT/OBJECTOR
RAHAB WACEKE MURIUKI.....2ND APPLICANT/OBJECTOR
ANN WAMBUI KABIRU.....3RD APPLICANT/OBJECTOR
GEORGE KABERERE.....4TH APPLICANT/OBJECTOR
EUNICE WAIRIMU MUGWANJA.....5TH APPLICANT/OBJECTOR

VERSUS

NANCY NJERI THIRU.....1ST PETITIONER/RESPONDENT
JOHN MUCHIRI ND'UNGU.....2ND PETITIONER/RESPONDENT

RULING

Ibrahim Ndung'u Kimana died intestate on 16th October 1975. On 11/06/2014, the respondents herein jointly petitioned this court for grant of letters of administration intestate in their capacity as beneficiaries of the estate. The applicants herein and the 2nd petitioner are all children of the deceased while the 1st petitioner is the daughter in law to the deceased, being a widow of the late Samuel Kimana Ndung'u, who was a son of the deceased.

On 16/07/2014 the applicants through the first applicant filed objection to the making of the grant. The objection was premised on the grounds that she is a daughter of the deceased and thus ranks in priority over the 1st Petitioner who is a daughter in law to the deceased. Further, that the 2nd Petitioner though a son of the deceased is hostile to the other children of the deceased and thus cannot administer the estate with fairness. The objector filed a petition by way of cross petition together with her objection. She reiterated that the Petitioner being a daughter-in-law of the deceased ranks below her and her siblings in priority of persons qualified to apply for grant of letters of administration intestate.

The petitioners were issued with grant of letters of administration intestate on 18/12/2014 despite the

objection and cross-petition on record. The applicants subsequently filed Summons for revocation dated 6/02/2015 seeking the revocation or annulment of the grant issued to the respondents on the grounds that: the grant was obtained through material representation and/or fraud as no consent to petition for the grant was sought or obtained from the applicants/objectors; the petitioners are not suitable to administer the estate as they are persons of lesser priority and the applicants have not renounced their right to apply for grant; and that the petitioners are using the grant fraudulently obtained to compromise the estate and interest of the applicants and if grant is not revoked the applicants' interests will be compromised. In the affidavit sworn in support of the summons, the applicant averred that the 1st petitioner is a widow of their late brother Samuel Kimana Ndungu and an administrator in the estate of the deceased Samuel Kimana Ndungu; while the 2nd petitioner is their step-brother. That the 1st petitioner ranks lower in priority to them as persons entitled to grant. They reiterated that the grant was obtained without their consents, nor had they renounced their right to petition for grant and as such should be revoked.

The petitioners opposed the summons for revocation through replying affidavit dated 15/07/2015 sworn by the 1st Petitioner herein in which she vehemently denied the applicant's averments in the affidavit supporting the summons for revocation. It is her case that the applicants were duly served with citations to accept or refuse letters of administration intestate and failed to attend the notice to accept or refuse letters of administration. She prayed that the summons for revocation should be dismissed with costs and the grant issued to them be confirmed.

The application was disposed by way of written submissions with both sides duly filing their submissions. **Section 76** of the **Law of Succession Act** lists the grounds upon which a grant, whether or not confirmed can be revoked. The first ground therein provides that a grant can be revoked where the proceedings to obtain the same were defective in substance. I note that the objectors' consent to the petition for grant was not obtained. The form 38 filed together with the petition for the grant lists the objectors' names but no signature is appended against those names. This goes against the provisions of **rule 26(2)** of the **Probate and Administration Rules** which mandated the petitioner to obtain consent to the making of the grant of letters of administration intestate to a person of equal or lesser priority (**In the Matter of the Estate of MARIKO NJERU MIGWI (Deceased) [2014] eKLR**). Accordingly, the grant issued should be revoked as the proceedings to obtain the same were defective for lack of the objectors' consents to the same.

Furthermore, **Section 66** of the **Act** provides for a general guide for the court on person(s) to whom a grant of letters of administration shall be made. The Applicants are children of the deceased, the 1st Petitioner is daughter in law of the deceased and she cannot rank higher in priority over the children of the deceased. As administrator of the late husband's estate, she is only entitled to her husband's share of the deceased's estate. **Section 35 & 38 of the Law of Succession Act** are clear that the children of the deceased are entitled to share equally the deceased's estate.

The applicants' consents were not obtained to the petitioners' petition for grant and they did not renounce their right to petition and as such the grant was obtained through defective proceedings.

Another indicator of defective proceedings in issuing of the grant herein is exhibited by the fact that the grant was issued to the petitioners without the applicant's objection being heard, despite the objection being on record. The petitioners herein petitioned for grant on 11/06/2014. The objectors filed their objection on 16/07/2014 together with their petition by way of cross-petition. From perusing the court file, I note that the objection was not heard at all before issuance of the grant on 18/12/2014. This contravenes provisions of **Sections 68 and 69 of the Law of Succession Act** which provides for procedure after filing of objections. **Section 69(2)** provides that where an answer and a cross-application have been filed under **Section 68 (2)**, the court shall proceed to determine the dispute. This was not done. It has been stated that a grant is liable for revocation where the proceedings leading up to its making are defective and irregular (**IN THE MATTER OF THE ESTATE OF MURIRANJA MBORO NJIRI [NAIROBI HIGH COURT SUCCESSION CAUSE NO.890 OF 2003]**)

COURT ORDERS

For the above reasons, the Court orders as follows;

- 1. The summons for revocation of grant is allowed. The grant issued to the Respondents on 18/12/2014 is hereby revoked under Section 76(b) & (c) of Law of Succession Act.**
- 2. A new grant is issued to Lucy Njeri, John Muchiri and George Kaberere as administrators of the deceased's estate and shall exercise duties under Section 83 of the Law of Succession Act.**

DELIVERED AND SIGNED IN OPEN COURT AT NAIROBI THIS 29TH DAY OF FEBRUARY, 2016

M.W. MUIGAI

JUDGE

In the presence of:

.....
.....