



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MOMBASA**  
**SUCCESSION NO. 329 OF 2013**  
**IN THE MATTER OF THE ESTATE OF THE LATE JOSEPH HAKIMU CHIFU**

**1. WINNIE M. KAVU**

**2. ELIZABETH J. HAKIMU.....APPLICANTS**

**VERSUS**

**1. FRANCIS KAMANZA HAKIMU**

**2. WILLIAM CHIFU HAKIMU.....RESPONDENTS**

**RULING**

1. The deceased to whose Estate the proceedings herein relate is Joseph Hakim Chifu, who died on 25.10.05 in Mbalmweni, Kilifi. From the record, the deceased was a polygamous man who had three wives. The 1<sup>st</sup> wife, the 1<sup>st</sup> Applicant herein had one child while the 2<sup>nd</sup> wife who predeceased the deceased had three children two of whom are the Respondents herein. The 3<sup>rd</sup> wife, the 2<sup>nd</sup> Applicant herein had nine children.

2. The Respondents filed a Petition for Grant of Letters of Administration for the estate of the deceased in this cause on 19.9.13 and the Grant was issued to them on 27.3.14.

3. The Application before me dated 4.6.15 is a Summons for Revocation of the said Grant brought under Section 76 of the Law of Succession Act. The Applicants, Winnie M. Kavuu and Elizabeth J. Hakim seek an order that the Grant of Letters of Administration to Francis Kamanza Hakim and William Chifu Hakim made on 27.3.14 be revoked. It is supported by the grounds on the face of it and in the Affidavits of the Applicants.

**The Applicants' Case**

4. It is the Applicants' case that shortly after the death of the deceased, it was agreed at a family meeting that the Applicants would be the Administrators of the estate of the deceased. The Applicants therefore petitioned for a Grant of Letters of Administration in High Court Succession Cause No. 452 of 2012 which Grant was issued to them on 6.5.13 and confirmed on 11.2.14.

5. The Applicants claim that the original Title No. CR 7995 for the property forming the estate of the deceased got lost and they made the requisite application and a provisional titled was issued. That upon

presentation of the Confirmed Grant and provisional title to the Lands Registry in Mombasa in April 2015 for purposes of transmission, they were informed by the Registrar that another Grant had been presented by the Respondents together with the original Title No. CR 7995. It is at this point that the Applicants discovered the proceedings herein.

6. It is the Applicants' case that the Grant herein was obtained fraudulently by the Respondents making a false statement and by concealment from the honourable court of material facts. The 1<sup>st</sup> Applicant has been left out as a beneficiary in the proceedings herein while the 2<sup>nd</sup> Applicant denies having signed the consent to the Respondents' Petition for the Grant and further disowns the signature against her name in the filed consent. The Applicants further claim that the Respondents supported their Petition with a letter from the chief of Ganze location yet the deceased resided in Mbalamweni and not in Ganze.

7. In their submissions, the Applicants reiterated the contents of their Application and Affidavits. It is their submission that by the time the Respondents filed the proceedings herein, the Applicants already had a Grant of Letters of Administration issued to them in Succession Cause No. 452 of 2012.

8. On the claim by the Respondents that the property herein belonged to their late mother though registered in the deceased's name, the Applicants submit that the Respondents have made it clear that they do not represent the interests of anyone else but their own.

9. It is the Applicants' further submission that in law, for purposes of seeking a grant of representation, as widows of the deceased, they stand in priority against the Respondents who are sons of the deceased. They aver that the Respondents' interests in the estate are well taken care of in High Court Succession Cause 452 of 2012 as administrators, they intend to share the proceeds of the estate equally among all beneficiaries.

10. To buttress their submissions the Applicants cited two authorities that illustrate circumstances where the Court will revoke a grant.

#### The Respondents Case

11. The Respondents deny the allegations of the Applicants that they fraudulently obtained the Grant of Letters of Administration. It is their case that they followed due process in applying for the Grant and that the same was properly issued to them. The Respondents insist there was a family meeting held on 16.11.11 attended by the 2<sup>nd</sup> Applicant and the household of the 1<sup>st</sup> Applicant where they were duly appointed the family representatives.

12. The Respondents submitted that the Applicants did not prove fraud on the Respondents' part. They submit that the 2<sup>nd</sup> Applicant was present at the said meeting and gave her consent by signing and she cannot now claim that the signature was a forgery. The Respondents further submitted "Furthermore failure by one dependant to give consent cannot be a ground for revocation of grant when other beneficiaries duly grant consent".

13. It is the Respondents' submission that the Applicants did not discharge their burden of proving their allegation that the family had decided that they would be the administrators of the estate of the deceased as required by the evidence Act. They argue that unlike the Applicants, they were able to adduce sufficient evidence of the meeting appointing them as representatives of the family and consent from the other beneficiaries.

14. The Respondents cited several authorities to buttress their submissions and urged the Court to dismiss the Summons for Revocation of Grant.

#### Determination

15. I have considered the depositions and submissions in support of and in opposition to the Summons for

Revocation of Grant. The Applicants claim that the Respondents applied for a Grant of Letters of Administration fraudulently by the making of a false statement or by the concealment from the court of something material to the case *to wit* that the 1<sup>st</sup> Applicant is a widow of the deceased and a beneficiary of the estate. This fact is denied by the Respondents who insist that all the necessary consents were given.

6. Section 76(b) of the Law of Succession Act provides

***“ 76 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. ...*

***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. ...*

16. The failure by the Respondents to disclose that the 1<sup>st</sup> Applicant is a widow of the deceased and a beneficiary of the estate amounts to making a false statement and concealment from the court of something material to the case.

17. The Applicants claim that the consent of the 2<sup>nd</sup> Applicant was not obtained and have disowned the signature against her name in the consent that was filed by the Respondents. In response, the Respondents in their submissions focussed largely on the family meeting wherein the Respondents claim they were appointed the representatives of the family. They contend that the 2<sup>nd</sup> Respondent was present at the meeting and she gave her consent. In their submissions, the Respondents dwelt at length on the issue of consent and cited several authorities. They argued that the requisite consents were given in their Petition.

18. It was the Respondents further submission that failure by one dependant to give consent cannot be a ground for revocation of grant when other beneficiaries duly granted consent. This is a curious argument that is not backed by law. Rule 26(1) and (2) of the Probate and Administration Rules provides that

***“26. (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 affidavit...”***

19. From the above provisions, consent of persons in equality or priority with the applicant is mandatory. The submission by the Respondents does not therefore hold water and is indicative of a misconception of the law. In the instant case, the 1<sup>st</sup> Applicant being a widow of the deceased is a person in priority to the Respondents, her consent was therefore a mandatory requirement. Consequently, the Grant in favour of the Respondents ought not to have been issued for want of the consent of the 1<sup>st</sup> Applicant as it violated Rule 26(1) cited above.

20. Away from the issue of family meetings, consents and the priority of beneficiaries, the more fundamental concern to this Court is that there are two Grants of Letters of Administration in respect of the estate Joseph Hakim Chifu (deceased) with two different sets of administrators. The first Grant was issued to the Applicants in Succession Cause No. 452 of 2012 on 6.5.13 and confirmed on 6.12.13 and all beneficiaries were involved. The second Grant was issued to the Respondents in the cause herein on - 27.3.14 but the 1<sup>st</sup> Applicant was not named or involved. Succession Cause No. 452 of 2012 was filed earlier in time on 31.10.12 while this Succession Cause No. 329 of 2013 herein was filed on 19.9.13.

21. When faced with a similar situation where there were two grants in respect of the same estate, Kariuki

G.B.M, J (as he then was) opined in In Re The Estate Of Lyduska Hornik Platto (deceased) [2012] eKLR

*“There cannot be two grants in respect of the same Estate. If the said Richard Momanyi O. Emmanuel has any interest in the Estate of the said deceased, the right course is to raise his claim in the cause in which the Grant was issued. To allow the Petition by Richard Momanyi O. Emmanuel to be sustained is to invite confusion in the Estate. The Petition for the Grant is as misplaced as it is superfluous. I have no hesitation in striking it out with costs to the Applicants”.*

22. Musyoka, J in In Re the Estate of Muturi Gatuku (Deceased) [2014] eKLR had this to say regarding two grants in respect of the same estate:

*“It must be stated from the outset that there can only be one grant of representation to the estate of one individual. It is therefore untenable that there are two grants and two sets of administrators in respect of the same estate”*

23. I agree with the two learned judges in the above cited cases. In view of the fact that Succession Cause No. 452 of 2012 was filed earlier in time, and in view further of the fact that the Respondents have not denied being involved or giving their consent in the same, their filing of this succession cause is clearly an abuse of the court process. Rather than filing another cause, the Respondents ought to have filed an objection in Succession Cause No. 452 of 2012 under Section 68 of the Law of Succession Act if at all they were unhappy with the Administrators therein.

24. In the circumstances, I allow the Application and make the following orders:

- a. The Grant of Letters of Administration for the estate of Joseph Hakimu Chifu issued to Francis Kamanza Hakimu and William Chifu Hakimu be and is hereby revoked.
- b. Because the Respondents were aware of the existence of Succession Cause 452 of 2012 and yet filed the instant cause, they will bear the costs of this Application.

**DATED, SIGNED and DELIVERED in MOMBASA this 22<sup>nd</sup> day of March, 2016.**

**M. THANDE**

**JUDGE**

**In the presence of: -**

..... **for the Applicants**

..... **for the Respondents**

..... **Court Assistant**