



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
SUCCESSION CAUSE NO. 951 OF 2014
IN THE MATTER OF THE ESTATE OF J K G (DECEASED)
C M M.....OBJECTOR/APPLICANT
VERSUS
NANCY MUTHONI MACHARIA
ALFRED MACHARIA KIHORO.....RESPONDENTS

JUDGMENT

1. The applicant has filed a summons for revocation of grant dated 7th July 2015. The same is based on grounds that;

- i. The Grant was obtained by making false statement and by concealment from court of something material facts to the case.
- ii. That the Grant was obtained fraudulently by falsifying documents, which is criminal.
- iii. That the Grant was obtained from other family members including the applicant.
- iv. That the Grant was obtained by means of untrue allegations of a fact essential in point of law to justify the grant notwithstanding that the allegations was made in ignorance inadvertently.
- v. That upon revocation of the said same be issued to the applicant herein.
- vi. That the cost of the application be catered for.

2. In her affidavit in support of the said application dated the 7th July 2015, C M M avers that she is a widow to the deceased J K G and a co-wife to Nancy Muthoni Macharia. She avers that she got married to the deceased under kikuyu customary law on 9th August 1991 and as a result to the said marriage sired 3 children with the deceased namely; R D K-17 years, S G K -15 years and D V I K- 11 years. That the letters of administration intestate to the deceased's estate were made to Nancy Muthoni Macharia and Alfred Macharia Kihoro on 8th September 2014 having failed to disclose that the deceased That the deceased died intestate leaving behind two widows and seven children. That despite her ranking equally to Nancy her co-wife, her consent to takeout letters of administration was never sought and she was kept in the dark. That the respondents failed to inform the court that the deceased had another home with three

children who are minors and still require education. That each of the house should be represented but opted to divide the family by applying for the letters of administration themselves. That the respondents conveniently left out the motor vehicle registration KAT [particulars withheld] and livestock that survived the deceased. She avers that the grant of letters of administration granted to the respondents should be revoked and the same be issued to her or she be enjoined as a co-administratrix.

3. The respondents despite being served with the said summon as evidenced by the affidavit of service dated 18th January 2016 did not file any response.

4. The matter proceeded ex-parte on 20/1/2016. C M M the applicant herein adopted her affidavit in support of the said application into evidence.

5. On cross examination by the court she testified that she met the other family in May 1992 but stated that she did not attend the deceased's burial in Nyahururu as the date of the same was not disclosed to her despite having been married to the deceased for almost 25 years. She urged the court to include her as a co-administrator to the deceased's estate.

6. The applicant filed written submissions and reiterated the averments as laid out in her affidavit in support of the said application. She further adduced a letter from the National Police Service, letter from the Ministry of Interior office of the president, letter from the chief Silibwet location, NHIF member data summary and birth certificates to her three children.

7. The applicant based her application on **Section 76 of the Law of Succession Act Cap 160**, which provides 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;"

8. The letter from the National Police Service dated 20th June 2013 addressing the deceased's on the deceased's gratuity recognized the two houses. **Nancy Muthoni Macharia** and her four children and **C M M** as the 2nd wife with her 3 children. The NHIF Member data summary of the deceased listed the applicant as his wife and listed their 3 children as his dependants. From the foregoing, it is clear that the applicant herein was a wife to the deceased and as such a beneficiary to the deceased's estate. The respondents' affidavit in support of petition for grant of letters of administration filed in this court on 22nd April 2014 **only** listed **Nancy Muthoni Macharia** as the only widow surviving the deceased and only listed her children leaving out the applicant C M and her 3 children who are minors. This I find amounted to concealment of from the court of something material to the case and as such, the grant so obtained was obtained fraudulently. It is also clear that the respondents did not involve the applicant in the said process and as such did not obtain their consent as required under the law. This court finds that the grant of letters of administration was obtained fraudulently and revokes the same. The court further orders that a fresh grant of letters of administration be issued to **both widows** surviving the deceased **Nancy Muthoni Macharia** and **C M M** as **co-administrators** of the deceased's estate. This court notes that the applicant has raised issue with some assets as having been omitted in the list of assets that survived the deceased in regards to this the court orders that the two houses meet and agree on what forms part of the deceased's assets and have the said grant amended appropriately to reflect the same. Cost in the cause. It is so ordered.

Dated, signed and delivered this **21st** day of **March** 2016.

R. E. OUGO

JUDGE

In the presence of;

.....**For the Applicant**

.....**For the Respondents**

M/s Charity

Court Clerk