



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAKURU**  
**SUCCESSION CAUSE NO. 16 OF 1984**  
**IN THE MATTER OF THE ESTATE OF ALICE KAHAKI NJOKA (DECEASED)**  
**ELIZABETH WANJIKU NJOKA.....PETITIONER**  
  
**VERSUS**  
  
**JOSEPH NJUGUNA**  
  
**LUCY WANJIRU**  
  
**TERESIA NJERI**  
  
**MARGARET DAMAT.....OBJECTORS**

**RULING**

**APPLICATIONS**

1. This ruling concerns two applications. The first is a summons for revocation of the grant dated 30<sup>th</sup> June, 2014. Elizabeth Wanjiku Njoka, the applicant, seeks the following orders-

**(a) the grant of letters of administration issued to Philip Njoka Kamau (deceased) on 24<sup>th</sup> July, 1984 and confirmed on 28<sup>th</sup> February, 1994 be revoked/annulled;**

**(b) that Elizabeth Wanjiku Njoka be appointed as administratrix of the estate of the deceased instead of Philip Njoka Kamau; and**

**(c) the costs of the application be provided for**

2. The second, is a petition dated 28<sup>th</sup> June, 2014. The applicant seeks letters of administration *de bonis* to enable her administer assets of the deceased which were not included in this cause.

**BACKGROUND**

3. These proceedings relate to the estate of the late Alice Kahaki Njoka, (hereinafter referred to as the deceased), who died intestate on 25<sup>th</sup> August, 1983 at Nakuru. Her spouse (the applicant's father) petitioned for letters of administration intestate and disclosed the following beneficiaries:

(a) Philip Njoka Kamau spouse now deceased

(b) Njuguna Njoka-son

(c) Kibunja Njoka-son

(d) Wanjiku Njoka-daughter

(e) Nyagitha Njoka-daughter

(f) Wanjiru Njoka-daughter

4. He also stated that her estate constituted of two properties, namely; an unsurveyed plot in Nakuru Municipality and L.R. No. 8836/769 later registered under the Registered Land Act as L.R. Municipality/Block/2/531. The grant of letters of administration was confirmed on 28<sup>th</sup> February, 1994 on the terms that the spouse will receive the whole share of L.R. Municipality/Block/2/531.

5. The applicant filed summons for revocation of the grant but did not prosecute it choosing instead to file a fresh succession cause, No. 347 of 2013 seeking letters of administration for the estate of the deceased. This cause was struck out *vide* the ruling dated 6<sup>th</sup> June, 2014 where the court held that all matters pertaining to the estate of the deceased should be heard in this cause.

6. After the death of the deceased, the father married four wives with whom he had children. At the time of his death on 1<sup>st</sup> May, 2012, he was survived by five houses including the children of the deceased. He died testate having left a will. The succession cause relating to his estate is Nakuru High Court Succession Cause No. 497 of 2013 In the matter of the Estate of Philip Kamau Njoka.

### **THE PLEADINGS AND EVIDENCE**

7. The applicant's case was stated in her supporting affidavits sworn on 28<sup>th</sup> June, 2014 and 23<sup>rd</sup> December, 2014, her further affidavit sworn on 23<sup>rd</sup> December, 2014, the submissions filed on 18<sup>th</sup> December, 2015 and supplementary submissions filed on 21<sup>st</sup> December, 2015. The objectors filed a Replying Affidavit sworn by Joseph Njuguna on 16<sup>th</sup> October, 2014 in response to the summons for revocation of the grant and a notice of objection to the making of the grant dated 4<sup>th</sup> August, 2014. Their submissions were filed on 23<sup>rd</sup> February, 2016.

8. In addition to their pleadings, the parties gave viva voce evidence which I will summarise hereunder.

### **THE APPLICANT'S CASE**

9. The applicant is a daughter of the deceased. She stated that in addition to the beneficiaries listed in their petition for letters of administration, the deceased was also survived by I W N and J N N. At the time of the death of their mother, the beneficiaries were aged as follows-

a. Wanjiku Njoka-23 years

b. N N-18 years

c. W N-16 years

d. I W N- 7 years

e. J N N- 5 years

10. She sought revocation of the grant on the grounds that these beneficiaries, and in particular the deceased's daughters did not consent to the appointment of their father as administrator or to him being the sole beneficiary of the estate. She also accused their father of obtaining the grant fraudulently by concealing from the court that the beneficiaries had not renounced their claims to the estate.

11. The second ground is that the only asset listed in the grant has not been administered to date and remains in the name of the deceased. The father's grant has since become useless and inoperative following his death. Accordingly this grant should be revoked and a new administrator appointed to oversee the distribution of the estate.

12. The third ground was that some of the deceased's assets were not included in the grant. Her claim was that the deceased was a great entrepreneur who ran a successful business. Their father was a businessman who later ventured into politics. He was maintained by the deceased and that all the properties that are registered in his name in fact belonged to the deceased and he was holding them in trust for her.

13. However, in his will, the deceased has dealt with this property as if it was his own without separating that which belonged to him and the deceased's. As a result, persons who are not the beneficiaries of the deceased, that is, the father's wives and their children, will benefit unlawfully.

14. It is also on this ground on non-disclosure of all the assets of the deceased that the application for letters of administration *de bonis* is premised. The applicant wishes to administer the part of the estate that has not been administered.

### **THE OBJECTORS' CASE**

15. The Objectors were Joseph Njuguna, brother to the applicant, and Lucy Wanjiru, Teresiah Njeri and Margaret Damat, the applicant's step mothers.

16. It was their case that the only asset that belonged to the deceased was inherited by their father and now forms part of his estate. Therefore, any issues touching on it can only be determined in that Succession Cause No. 497 of 2013.

17. The applicant was accused of trying to stall the administration of their father's estate because she never raised these issues during his lifetime. There is no evidence that the deceased owned any of the properties. In addition, their father denied the allegation that he fraudulently caused the deceased's properties to be registered in his name in his affidavit sworn on 30<sup>th</sup> April, 2009 none of the assets of the deceased were left out.

18. They denied the contention that L.R. Municipality/Block/2/531 is not administered as it now forms part of the estate of the deceased.

### **ANALYSIS AND DETERMINATION**

19. I have considered the pleadings and submissions of the parties filed in this case. The issues for determination are as follows-

- (a) whether the estate of the deceased was wound up;
- (b) whether the administrator disclosed all the beneficiaries of the estate;
- (c) whether all the beneficiaries consented to the distribution of the estate;
- (d) whether there are assets that were not included in the grant; and
- (e) whether Elizabeth Wanjiku Njoka should be appointed as the administrator of the estate of the deceased;

**20. Section 76** of the **Law of Succession Act** provides for the grounds on which a grant may be revoked as follows:

**“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) 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**

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

21. At the time of her death, the deceased had 8 dependants, one spouse and 7 children. However, in the affidavit in support for his petition for letters of administration intestate, the administrator did not include I W N and J N N who as children of the deceased, were her dependants within the meaning of section 29 of the Law of Succession Act.

22. Failing to include them was fatal to the grant and amounted to an abrogation by the administrator of his duties. The Law of Succession Act, at section 35 provides for the manner of distribution of the estate of a deceased person who was survived by a spouse and children. The spouse is entitled to the personal and household effects absolutely but acquires a life interest in the whole residue of the net intestate estate. Upon termination of the life interest, the property devolves to the children equally.

23. The court of appeal in **Justus Thiora Kiugu & 4 others V. Joyce Nkatha Kiugu & Another**, [2015] eKLR held that this statutorily provided mode of distribution will only be departed from where all the beneficiaries agree on a mode of distribution. The consent will take precedence because the court is enjoined by **Article 159 (3)** of the **Constitution** to promote alternative dispute resolution mechanisms. However, in order to be adopted, all the beneficiaries must agree to willingly renounce their claims. In the absence of such a consent, the court must apply the Law of Succession Act.

24. Not only were the two dependants left out of these proceedings but those who were included and were of full age did not consent to their father being given the asset of the estate absolutely. There is no evidence that they renounced their claim.

25. In addition the administrator failed to disclose that some of the dependants were minors, and therefore a continuing trust was established. This trust is terminated when the children attain full age. **Section 58** of

the **Law of Succession Act** requires that in such instances, a grant cannot be issued to one person alone, unless that person is the Public Trustee or a Trust Corporation.

26. The requirement is so vital that even where two administrators are appointed and one dies, the surviving administrator is required under **Section 75** of the Act to appoint not less than one or more than three and in so failing, the court may appoint on its own motion. Indeed, failure of an administrator to appoint gives rise to a cognizable offence and such an administrator shall be guilty of an offence and shall be liable to a fine not exceeding Kshs. 5,000/= as per **Section 95 (1) (2)** of the Act. Failure to comply with this mandatory provision rendered the grant defective.

27. I therefore find that the grant was obtained fraudulently and through concealment of material facts, to wit, all the beneficiaries of the estate were not disclosed. There is no evidence that the beneficiaries who were of full age were aware of these proceeding or consented to the confirmation of the grant. In addition, the grant was defective because it was made to a single administrator, yet section 58 mandates appointment of more than one administrator when a continuing trust is established. These grounds are sufficient grounds to warrant the revocation of the grant.

28. There is the issue of whether all the assets of the deceased were included in the grant. I note on the material before me that this issue is one that was heavily contested. The underlying dispute is between the beneficiaries of Alice Kahaki Njoka (the deceased) and Philip Njoka Kamau (the administrator) and concerns who is the rightful owner of the various properties in the application.

29. Having found that the grant is one that merits revocation, and that new letters of administration should issue, the to be newly appointed administrator(s) duties, by virtue of Sections 82 and 83 of the Act, will now be to identify, collect and preserve all the free property which belonged to the deceased. Section 82 of the Act confers upon the administrator (s) powers to enable him/her discharge his/her duties. The said section provides:

**82. Personal representatives shall, subject only to any limitation imposed by their grant, have the following powers –**

**(a) to enforce, by suit or otherwise, all causes of action which, by virtue of any law, survive the deceased or arise out of his death for his estate;**

**(b) to sell or otherwise turn to account, so far as seems necessary or desirable in the execution of their duties, all or any part of the assets vested in them, as they think best:**

30. Therefore, should there be any dispute regarding ownership or title to any asset, the administrator may file a suit within the jurisdiction provided for by law in order to recover or collect any such asset.

31. As to whether the applicant should be appointed as administrator of the estate, I see no reason not to allow this prayer. The major dispute in this case concerns identification of the assets of the deceased. There was no allegation that the applicant would not be able to discharge her duties. On the other hand I find that Joseph Njuguna who is entitled to apply for letters in equal degree to the applicant and who objected to her claimants would not be able to adequately represent the estate of the deceased.

32. I note that he has taken a position that is adverse to the interest of the estate of Alice Kahaki Njoka and for that reason, a conflict of interest arises. In the circumstances, I find that Elizabeth Wanjiku Njoka is the most suitable person to be appointed as the administrator of the Estate of Alice Kahaki Njoka.

33. Following the revocation of the grant and appointment of Elizabeth Wanjiku Njoka as the administrator of the estate, the application dated 28<sup>th</sup> June, 2014 for letters of administration *de bonis* has been overtaken by events. Accordingly, the same is dismissed.

## **DETERMINATION**

34. For the above reasons, I make the following orders-

- (a) The application dated 30<sup>th</sup> June, 2014 is hereby allowed.
- (b) The grant of letters of administration issued on 24<sup>th</sup> July, 1984 and confirmed on 28<sup>th</sup> February, 1994 is hereby revoked;
- (c) Elizabeth Wanjiku Njoka is hereby appointed as the administrator of the estate of the deceased;
- (d) The application dated 28<sup>th</sup> June, 2014 for letters of administration *de bonis* is hereby dismissed with no orders as to costs
- (e) The applicant's costs for the summons for revocation or annulment of the grant dated 30<sup>th</sup> June, 2014 shall be borne by the estate.

**Dated, Signed and Delivered at Nakuru this 15th day of June, 2016.**

**A. K. NDUNG'U**

**JUDGE**