



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NYERI**

**SUCCESSION CAUSE NO. 232 OF 2000**

**IN THE MATTER OF THE ESTATE OF THE LATE KOMU MUTHIGANI-DECEASED**

**Catherine Wanjiru Komu.....Applicant**

**Versus**

**Pliscilla Nyambura Komu.....Respondent**

**RULING**

**Catherine Wanjiru Komu** (herein after referred to as the applicant) has applied to this court seeking to have the grant of letters of administration issued to **Pliscilla Nyambura Komu** on 14<sup>th</sup> November 2000 revoked on grounds that the proceedings leading to the issuance of the grant were defective in substance and that the grant was obtained fraudulently by making a false statement and by concealment of material information from the court.

The applicant avers that she was the second wife to the deceased, that after the deceased's death, the respondent and her daughter convened a meeting and it was agreed that petitioning for the grant of letters of administration be delayed pending agreement on the mode of distribution. Notwithstanding the aforesaid arrangement, the Respondent proceeded to secretly institute these proceedings and caused the grant to be confirmed and the properties allocated to the Respondents mother **Milka Wambui Komu** absolutely and that the respondent was left out in the said distribution.

At the hearing the applicant stated that she got married to the deceased in 1969, that she had 5 children with the deceased while her co-wife had only one child with the deceased, namely the Respondent herein, that 3 of her children are named after the deceased as evidenced by copies of their national identity cards produced in court. Her evidence was that after the deceased died she was chased away,

In support of the applicants case is the evidence of **Peter Kiriungi Ndururi** who once worked as the manager of Munyu Dairy Co-operative Society Ltd. He stated that during the course of his aforesaid work, he got to know the deceased who introduced the applicant as his wife for the purposes of registration and monthly payments from the Society.

The applicant also called **Wanjiru Wannjohi** as her witness whose evidence was that she knew the applicant as the deceased's wife and she knew their children.

The Respondent denies in her replying affidavit that the proceedings herein were defective or fraudulent and stated that there was no concealment of material facts as alleged. She essentially her replying affidavit. In her oral evidence in court she insisted that she did not know the applicant, yet in her affidavit, she stated that the applicant was an employee of the deceased.

Her daughter **Milka Wambui Komu**, the sole beneficiary to the estate as per the confirmed grant stated that the applicant never lived in the deceased's property, that she has never been a member of the deceased's household and that the applicant only raised the claim after the deceased's death but the same as dismissed by elders, the assistant chief and the chief. She insisted that the applicant was married to a one **Muthumbi Wamukurure**. She denied that the grant was applied for secretly, and stated that they never informed the applicant at the time of filing the grant because she was not a wife.

I have carefully considered the oral and affidavit evidence and submissions by both counsels and also the relevant law and in my view, the issue for determination, is whether the applicant has demonstrated sufficient grounds for the revocation of the grant as provided for under Section 76 of the Law of Succession Act 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 an 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 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 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 order or allow; 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.*

The grounds upon which a grant may be revoked or annulled are thus statutory and it is incumbent upon any party making an application for revocation or annulment of grant to demonstrate the existence of any, some or all the above grounds. A close look at Section 76 shows that the grounds can be divided into three categories:- the first two deal mainly with the propriety of the grant making process; the other grounds deal mainly with mal-administration i.e personal representatives have not been effective in administration. The third category is where the grant has become inoperative due to subsequent circumstances.

The proceedings to obtain a grant are considered defective in substance under several circumstances. For example where there is a will, which is the basis of the petition, and the same is found to be invalid. [2] In the present case the applicants case is that she was married to the deceased, that she had children with the deceased who are named after their father and she produced copies of national identity cards in support of the said position. The Respondent disputed his fact and insisted that she did not know the applicant, but in her affidavit she stated that the applicant was an employee.

The applicant states that at a meeting held at the deceased's brothers home, it was agreed that the issue of petitioning for letters of administration be delayed pending agreement. This piece of evidence was not rebutted. The Respondent placed heavy reliance on an alleged decision by the chief to the effect that the applicant was not a wife. Though no proceedings were produced to confirm such a decision, I hold the view that the chief not being a court of competent jurisdiction could not determine such an issue and even if he did, his decision cannot have the force of law.

Whether or not the applicant was married to the deceased is a matter that can be determined by this court while ascertaining the lawful beneficiaries of the deceased. For now, it will suffice for me to find that the

applicant having raised a claim to the deceased's estate had a right to be informed at the time these proceedings were instituted. I find that by failing to inform the applicant at the time of filing these proceedings and also failing to disclose her interests to the court amounted to non-disclosure of material information.

I hold the view that the applicant was under a legal duty to disclose to the court the applicant's interest to the deceased's estate and leave it to the court to determine the dispute.

It is settled law that a person who approaches the Court for grant of relief, equitable or otherwise, is under a solemn obligation to candidly disclose all the material/important facts which have a bearing on the adjudication of the issues raised in the case. In other words, he/she owes a duty to the court to bring out all the facts and refrain from concealing/suppressing any material facts within his/her knowledge or which he/she could have known by exercising diligence expected of a person of ordinary prudence. If he/she is found guilty of concealment of material facts or making an attempt to pollute the pure stream of justice, the court not only has the right but a duty to deny relief to such person. This position was well captured in one of the earliest decisions on the subject rendered in 1917 in *R. v. Kensington Income Tax Commissioner* by Viscount Reading, Chief Justice of the Divisional Court.

Also in the case of *Brinks-Mat Ltd vs Elcombe*, it was held that a party is under a duty to disclose to the court all relevant information even if it is not to his or her advantage. I strongly hold the view that the Respondent was under a solemn duty to bring to the attention of the Court the interests of the applicant since they had already held meetings and discussed it and clearly they knew what she was claiming.

The duty of a litigant is to make a full and fair disclosure of the material facts. The material facts are those which it is material for the judge to know in dealing with the issues before the court. The duty of disclosure therefore applied not only to material facts known to them but also to any additional facts which she would have known if she had made inquiries. The question that inevitably follows is whether the non-disclosure was innocent, in the sense that the fact was not known to the applicant or that its relevance was not perceived. I find that the non-disclosure in this case was not innocent at all but deliberate.

In the matter of the state of *Mwaura Mutungi alias Mwaura Gichichio Mbura alias Mwaura Mbura-deceased* a grant was revoked because the applicant had failed to notify the applicant of the petition and obtain his consent sought. In the present case, the applicants state that she was never notified when these proceedings were filed nor was her consent sought. Similarly, in *the matter of the Estate of Karanja Gikonyo Mwaniki-deceased* the proceedings were declared to be defective and the grant was revoked under similar circumstances.

The Supreme Court of India in *Anil Behari Ghosh vs SMT. Latika Bla Dassi & Others* interpreting their equivalent of Section 76 (a) had this to say:-

*"the expression "defective in substance" ....means that the defect was of such a character as to substantially affect the regularity and correctness of the previous proceedings"*

A grant can also be revoked on account of false statements and concealment of vital matters or on grounds that the applicant deceived the court as was held in *Samuel Wafula Wasike vs Hudson Simiyu Wafula* as stated above, I find that there was deliberate non-disclosure of relevant materials.

A grant obtained fraudulently by the making of a false statement can also be revoked by the court as was held in *the matter of the Estate of Robert Napunyi Wangila. In the matter of the Estate of Murathe Mwaria-deceased* **koome J** summarised the grounds for revocation of a grant under Section 76 as follows:-

- i. when the procedure followed in obtaining the grant is defective in substance.
- ii. when the grant is obtained fraudulently by making a false statement.
- iii. making an untrue allegation of fact essential in point of law to justify the grant.

iv. or when the person who has the grant has failed to proceed diligently with the administration of the estate.

Turning to the facts of this case I find that the family herein held a meeting and resolved to delay instituting the petition pending agreement, that the parties appeared before the chief, a confirmation that there was a dispute, and that notwithstanding the existence of the dispute, the Respondent proceeded to petition for the grant without notifying the applicant. I find that these proceedings were initiated without the applicants knowledge or consent. My conclusion is that the proceedings leading to the issuance of the grant are defective in substance and that material information was not disclosed to the court in that had the court been made aware that there was an interested party, it would have hesitated to issue the grant. I am persuaded that the applicant concealed crucial information to the court.

A grant whether confirmed or not can be revoked on the grounds enumerated under Section 76 of the Act which I find have been proved in this case. I find that the applicant has established sufficient grounds for the court to annul or revoke the grant as provided under section 76 of the Act.

Accordingly, I hereby allow the application dated 9<sup>th</sup> June 2010 and order that the grant of letters of administration issued on 27<sup>th</sup> May 2014 to **Priscilla Nyambura Komu** be and is hereby revoked.

The Respondent shall pay the costs of this application to the applicants.

Right of appeal 30 days

Signed, Delivered and Dated at Nyeri this 26<sup>th</sup> day of July 2016

**John M. Mativo**

**Judge**

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