



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MERU
SUCCESSION CAUSE NO. 505 OF 2008

In the Matter of the Estate of M' Arimbi M' Mutua (Deceased)

FRANCIS MUTUA M' ARIMBI.....RESPONDENT/PETITIONER

Versus

CYPRIAN MURORI M' ARIMI.....APPLICANT/OBJECTOR

RULING

[1] Before me is a Summons for Revocation of Grant which is expressed to be brought pursuant to Section 76 (B) and (C) CAP 160 of the Laws of Kenya and Rule 44 (1) and 73 of the Probate and Administration Rules. According to the Applicant, revocation of grant herein is sought on the following grounds:

1. THAT the Grant of Letters of Administration and subsequent Confirmation of the same was obtained fraudulently by making false statement as the family had not consented to the filing of the succession cause.
2. THAT the Grant was obtained by untrue allegation of fact in that the succession cause was filed secretly without involving the members of the family of the deceased which was a clear fraud.
3. THAT the pleadings in the succession cause were forged in respect of the deceased Fredrick Mwenda and in particular Form 37B.
4. THAT the total effect of the confirmed Grant was to disinherit some members of the family.

[2] The said Application is supported by an affidavit of the Applicant in which it was deposed inter alia that the Petitioner is his younger brother from a different mother- I suppose he meant a step brother. That sometimes on 20th July 2011, the Land Registrar Meru called some members of the family including the Applicant to his office, and during that meeting, the Land Registrar told him that he wanted to remove a caution that had been lodged by the Applicant's uncle one M' Magambo M' Mutua. The Applicant averred that is the time when he discovered there was a succession cause in respect of the estate of the deceased. The discovery prompted him to go to court and he established that this succession cause had been filed by the Petitioner secretly and fraudulently. According to him, fraud is in the following material:

1. In the chief's letter Sarah Kagwiria, Fredrick Mwenda (deceased) and Mathenge M' Arimbi all children of M' Arimbi M' Mutua were omitted.
2. That Form P & A II is not dated.

3. That Form P &A 57 is not dated.
4. That Form 38 is a forgery as he did not sign the same.
5. That P &A affidavit in support is not dated.
6. That consent for Confirmation of Grant dated 13th October 2010 is a forgery as neither he nor Francis Mugambi who died on 17th July 2009 signed it.
7. That consent to the mode of distribution is a forgery as neither he nor Francis Mugambi who died on 17th July 2009 signed it.

[3] On the basis of the foregoing, he deposed that it was only fair and just that the Grant of Letters of Administration and the subsequent Confirmation be revoked.

Petitioner is indolent suitor

[4] When this matter came up for hearing on 16th March 2016, the court directed that this application be canvassed by way of written submissions and further directed that the Petitioner be served with notice as he was absent on that day despite having been served with notice to appear. The court further directed that the cause to be mentioned on 11th July 2016 for purposes of giving a ruling date. Again on 11th July 2016 the Petitioner did not attend court. Nonetheless, the court further indulged the Petitioner and directed that he shall file his submissions within 14 days of the order failure to which the court would determine the matter on the evidence on record. The matter was to be mentioned on 16th August 2016. On 16th August 2016, both parties were in court when the Petitioner intimated to court that he had not filed his submissions. The court observed that he was not keen on filing submissions despite having been allowed ample time to do so; the court ordered that it will decide the matter on the material before it. Despite the submissions by the Applicant in which he alluded to a replying affidavit allegedly sworn by the Petitioner in which he contended that the Petitioner had not denied the allegations herein, I have looked for any such affidavit and I find none. Accordingly, I can safely conclude that the Petitioner was quite indolent and unconcerned in this matter; he neither filed any affidavit nor submissions. That notwithstanding, I will decide the application on merit.

Revocation merited

[5] I have considered the submissions by the Applicant which essentially reiterates the contents of his supporting affidavit. I have also considered the arguments presented and the law. I am of this persuasion. Section 76 of the Law of Succession Act CAP 160 of the laws of Kenya provides the circumstances under which a Grant may be revoked. The most apt ones in this case are:

- (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; and*
- (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.*

[6] In the instant case the Applicant has contended inter alia that some beneficiaries were left out and that his alleged signature was a forgery. This contentions were not challenged in anyway by the Petitioner despite having been given ample time to file his rejoinder. I have no reason to doubt these averments. Accordingly in light of the material before me, I find that Sarah Kagwiria, and Mathenge M' Arimbi are children of M' Arimbi M' Mutua but were omitted from the list of children/dependants of the deceased-the effect of this is to disinherit *bona fide* beneficiaries of the estate of the deceased. I also find that Form

P &A 11, Form P & A 57, Form 38 and affidavit in support are not dated. I also find that neither the Applicant nor his deceased brother signed the consent documents filed herein. In totality, I find:-

- (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; and
- (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.

[7] Accordingly, the threshold for revoking a grant as set out in section 76 of the Succession Act has been met. As such, I revoke the grant issued to the Petitioner on 21st day of July 2009 and confirmed on 17th November 2010. As this matter involves close family friends, each party shall bear own costs. It is so ordered.

Dated, signed and delivered in open court this 28th day of September 2016

F. GIKONYO

JUDGE

In the presence of:

Petitioner – present

Objector – present

F. GIKONYO

JUDGE