



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
SUCCESSION CAUSE NO. 2326 OF 2007
IN THE MATTER OF THE ESTATE OF FRANCIS MACHARIA KARIUKI (DECEASED)

RULING

1. The application for determination is the summons dated 18th November 2011. It is premised on section 76 of the Law of Succession Act, Cap 160, Laws of Kenya. It seeks a partial revocation of the grant made on 6th May 2008 to the extent that it appoints Grace Wanjiru Macharia an administrator, and for restraining orders to bar her from selling or disposing of estate property.
2. The applicant, Peter Kariuki Macharia, is a co-administrator with the respondent, his mother, in the grant that he seeks to have revoked. He accuses her of selling estate property, which includes the deceased's shares in Manogeire Co. Limited and Alli Juma Farmers Co. Limited.
3. The applicant filed a further affidavit on 2nd July 2015, making further allegations and attaching copies of court papers in respect of properties that the respondent is alleged to be mismanaging. He filed a further affidavit on 31st July 2015 to make further allegations with respect to other assets that the respondent is alleged to be selling. He filed another affidavit on 2nd September 2016.
4. There is an affidavit of service on record, sworn on 10th January 2012, which indicates that the respondent was served with the application dated 18th November 2011 on 23rd December 2011. There is another affidavit of service on record indicating that the respondent's lawyers, Namada & Co. Advocates, were served with a notice for the hearing scheduled for 14th October 2015.
5. I have carefully ploughed through the record before me, and I have not come across any reply to the application by the respondent. I have noted that the application had been placed before Njagi J. on 18th January 2012, counsel appearing for the respondent pleaded for time to reply to the application, and he was granted fourteen (14) days for that purpose.
6. I have noted further that the application before me is founded on section 76 of the Law of Succession Act; it principally seeks revocation of the grant. That being the case, the matter ought to have been listed for directions first on the disposal of the application. The applicant has never sought to list it for directions; instead he fixed it for hearing and urged it on 14th October 2015.
7. He has filed a record three (3) affidavits without first obtaining leave of the court contrary to what is required by the law. I have noted that he did not even serve the said affidavits on the respondent. At any rate there is no proof of such service.

8. The principal order sought is that for revocation of the grant made to him and the respondent. However, in principle he would like the respondent removed as administrator so that he is left as the sole administrator. My reading of section 76 of the Law of Succession Act is that it does not envisage such a scenario. Partial revocation is not envisioned. Therefore there cannot be any basis for the applicant proceeding in the manner that he has in this matter.

9. Furthermore, the application as framed is a suggestion that the two (2) administrators are not working together, or that they are incapable of working together. The applicant appears to be saying that he cannot work with his co-administrator and therefore the latter ought to be removed. My reading of the circumstances is that the grant probably has become useless and inoperative on account of subsequent events. Ideally, therefore it ought to be revoked in terms of section 76(e) of the Law of Succession Act.

10. The record indicates that the applicant is not the only child of the deceased. There are four (4) others. None of them has sworn an affidavit to support the removal of their mother as administrator, or to support the prayer by the applicant that he should be made the sole administrator of the estate.

11. I have closely scrutinized the documents placed on record by the applicant in purported support of the application. None in my view support the contention that the respondent has sold or is selling estate property. There is nothing concrete. The applicant appears to be acting on fear that their mother may be disposing of estate property. If indeed that is what is happening then he has failed to place before court material that would reveal without doubt that maladministration by the respondent is happening.

12. For the reasons that I have stated above, I am not satisfied that a case has been made out for grant of the orders sought in the application.

13. The grant herein was made on 6th May 2008. According to section 71 of the Law of Succession Act, the holders of the grant ought to apply for its confirmation after expiry of six months. At the confirmation of the grant the court has to decide whether or not to allow the persons appointed as administrators to proceed as such or if other persons ought to be appointed to take their place, whether all the persons entitled to a share in the estate have been identified, whether the assets available for distribution have been identified, and determine how the said assets are to be shared out as between the survivors and beneficiaries.

14. I have noted from the record that there is an application for confirmation of grant dated 25th May 2009 and filed in court on an unknown date. I have also noted from the record that there were proceedings on 24th February 2010 on certain aspects of the confirmation application. A consent was recorded to dispose of a protest; however, the application was not disposed of and remains pending to date. What is outstanding should be whether the administrators of the estate ought to be confirmed, and how the estate is to be distributed as between the survivors of the deceased.

15. The issues that have been raised by the applicant in the 18th November 2011 can be addressed in the pending confirmation application. The court in the summons for confirmation can determine whether Grace Wanjiru Macharia ought to be confirmed as an administrator, and there is power for the court to appoint her substitute if need be. In determining what is available for distribution, the court can evaluate what is alleged to have been sold, and determine whether those sales were valid or not. The court can also call for accounts if necessary. The confirmation proceedings can be conducted orally where the parties take the witness stand and are cross-examined.

16. The deceased died in 2006. I believe it would be pushing the survivors way back in time if I were to revoke the grant herein. I shall give the administrators time to prosecute the pending application for confirmation within a given time frame, in default of which there would be no option but to revoke the grant

17. The orders that I am moved to make in the circumstances are as follows:-

- a. That that the application dated 18th November 2011 is hereby dismissed;
- b. That the administrators, or any one of them, are hereby given thirty (30) days to fix the application for confirmation of their grant for directions on its disposal;
- c. That the bulk of the estate comprises of property situated within the Kiambu County, consequently the cause herein shall be transferred to the High Court of Kenya at Kiambu for final disposal; and
- d. That there shall be no order as to costs.

18. It is so ordered.

DATED, SIGNED and DELIVERED at NAIROBI this 26TH DAY OF OCTOBER, 2016.

W. MUSYOKA

JUDGE