



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 711 OF 2006

IN THE MATTER OF THE ESTATE OF DAVID GACHUNGA NJAU *alias* DAVID FRANCIS GACHUNGA (DECEASED)

RULING

1. The deceased herein died on 27th December 1996.
2. Representation to his estate was sought in a petition lodged in this cause on 29th March 2006 by Mary Wangeri Gachunga and Zacharia Njau Gachunga in their respective capacities as widow and son, respectively, of the deceased. The deceased was expressed to have been survived by ten (10) individuals, being a widow and nine (9) children. The children were listed as Mary Wangeri Gachunga, Zacharia Njau Gachunga, Teresia Wairimu Machua, Damaris Wairimu Gachunga, Serah Kayo Gachunga, Monicah Njeri Gachunga, James Njoroge Gachunga, John Muroki Gachunga, Charles Njung'e and Joseph Kagwara Gachunga. The list of survivors tallies with that contained in the letter by the Chief of Nyathuna Location. He was expressed to have died possessed of landed assets situated within Kiambu County, a motor vehicle, shares in a limited liability company, money in a bank and funds in a provident fund.
3. A grant of letters of administration intestate was made to the petitioners on 16th January 2007. The grant is yet to be confirmed.
4. On 21st October 2011, a summons dated 19th October 2011 was lodged at the registry by John Muroki Gachunga for revocation of the grant of 16th January 2007. It is founded on the grounds that the grant was obtained in proceedings that were defective, and that were fraudulent on account of the making of false statements and misrepresentation and concealment of matter, and that was founded on untrue allegations of facts essential to the matter. The affidavit sworn in support of the application alleges that the petitioners did not disclose that the deceased had bank accounts with the Barclays Bank of Kenya and Kenya Commercial Bank. It is also alleged that the administrators had gone on to propose distribution of the estate without involving all the beneficiaries. The application dated 19th October 2011 is still pending and no directions have been given on its disposal.
5. Another application for revocation of grant dated 25th September 2013 was lodged at the registry on even date. It was at the instance of Monica Njeri Gachunga. She sought revocation orders, orders for accounts, deposit of certain funds in an estate account and committal of the administrators to jail for intermeddling. The grounds on the face of the application are that the ever since the grant was made the administrators had taken no positive steps to complete administration of the estate by distributing it, the administrators had secretly disposed of estate property, the administrators had failed to account of their administration of the estate, and her appointment as administrator in the place of the administrators. The affidavit in support of the application merely regurgitates the grounds on the face of the application.
6. There is no evidence on record that either application has been responded to by the administrators.

There is no proof of service of the first application, but the second application had been served on the administrators as per the affidavit of service on record.

7. It was directed that the second application dated 25th September 2013 be disposed of by way of written submissions. There is compliance with those directions. I have read through the applicant's submissions, together with the authorities attached.

8. I note that the grant herein was made on 16th January 2007. No application for confirmation of grant has been filed in the matter since then although the six (6) months allowed by section 71 of the Law of Succession Act, Cap 160, Laws of Kenya, have expired. By the time the first application for revocation of grant was made four (4) years had expired from the date of the making of the grant. The second application was filed six (6) years after the making of the grant.

9. Section 71 of the Act makes it a mandatory requirement that confirmation of grant be sought after expiry of six (6) months from the date of the making of the grant. Under section 73 of the Act, where a grant holder fails to apply for confirmation within one (1) year of the making of the grant, the court ought to give notice to the grant holder to apply for confirmation of the grant. Under section 76(d) (i) of the Act the court may revoke a grant where the holder fails to apply for confirmation of the grant within one (1) year from the date of its making.

10. I am satisfied from the record before me that the administrators have failed to apply for confirmation of the grant within the period allowed by the law. No explanation has been given or reasonable cause shown for this failure.

11. The applicant has called for an account by the administrators of their handling of the estate. Administrators are trustees in the sense that they hold property belonging to another for the benefit of other persons. That being the case they are duty bound to account to the beneficiaries of the estate as well as the court as the authority that appointed them administrators. The duty to account is statutory and therefore mandatory. Accounts must be rendered as a matter of course.

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

(a) That I do hereby revoke the grant made on 16th January 2007 to Mary Wangeri Gachunga and Zacharia Njau Gachunga;

(b) That the two former administrators shall render an account of their administration of the estate within thirty (30) days of the date of this order;

(c) That fresh administrators to be appointed upon an appropriate application being made by the survivors interested with notice to the rest of the survivors of the deceased;

(d) That as the landed property is situated within Kiambu County, I do order that the cause herein be transferred to the High Court of Kenya at Kiambu for disposal; and

(e) That there shall be no order as to costs.

DATED, SIGNED and DELIVERED at NAIROBI this 25TH DAY OF NOVEMBER, 2016.

W. MUSYOKA

JUDGE