



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
SUCCESSION CAUSE NO. 792 OF 2015
IN THE MATTER OF THE ESTATE OF HEZRON NG'ANG'A
KAROMO alias NG'ANG'A KAROMO (DECEASED)

RULING

1. The deceased herein died on 3rd May 2004.
2. Representation to his estate was sought in Kiambu SPMSCS No. 293 of 2010 by Jonathan King'ara Ng'ang'a in his alleged capacity as son of the deceased. The deceased was alleged to have been survived by three (3) sons, two (2) daughters, a grandson and a daughter in law. Their names were given as Edwin Karomo Ng'ang'a, Hezron Ng'ang'a Wairimu, Mary Wambui Njoroge, Steven Kori Ng'ang'a, Emily Wambui Ng'ang'a, Jonathan King'ara Ng'ang'a and Jemima Wairimu Ng'ang'a. The deceased was said to have died possessed of Kiambu Mun /Blk 5 (Kiamumbi)/547 and Ndumberi/ Ting'ang'a/T. 47, 580, 618, 621, 773, 914, and shares in Gatatha Farmers Company Limited, Cooperative Bank of Kenya and Kenya Breweries Limited.
3. A grant of letters of administration intestate was duly made to the petitioner on 28th August 2011. The same was confirmed on 29th August 2013 on an application dated 22nd November 2012. A certificate of confirmation of grant was duly extracted from the confirmation orders of 29th August 2013.
4. On 2nd April 2015, a summons for revocation of grant was lodged at this registry seeking annulment of the grant made in Kiambu SPMSCS No. 293 of 2010, among other orders. The application was premised on the grounds that the administrator and one of the survivors of the deceased had secretly and fraudulently sold a portion of one of the assets, had failed to file accounts and had dishonestly allocated a property to one Mary Wambui Njoroge instead of Jemima Wairimu Ng'ang'a.
5. The applicants are grandchildren of the deceased, being the children of Jemima Wairimu Ng'ang'a. They contend that their grandfather died testate having made a will on 13th March 1999. They aver that their mother was in jail at the time the petition for grant was filed in court, and she could not have possibly signed the papers lodged in court, which means that the alleged signature was a forgery. They state that the estate ought to be distributed as per the will of the deceased.
6. There is no proof that the revocation application was ever served on the persons named in it as respondents. There is however a notice of appointment of advocates dated 11th May 2015, and filed in court on 13th May 2015, suggesting that there was service of the application on the administrator. There is however nothing to show that the same was ever served on the second respondent.

7. I have scrupulously perused through the court file and I have not found any reply to the application by the respondents.

8. Directions were given on 28th July 2015 on the disposal of the revocation application.

9. A date for the hearing of the application was obtained at the registry *ex parte* on 10th November 2015 for hearing on 26th January 2016. There is an affidavit of service on record, sworn on 12th January 2016 and filed herein 22nd January 2016, indicating that the advocates for the administrator were served with a notice in respect of the hearing scheduled for 26th January 2016 on 24th November 2015.

10. Come 26th January 2016, counsel for the applicant attended court, but the respondents were not represented. The advocates for the applicant invited the court to determine the application on the basis of the affidavit in support of the application, saying that the application was unopposed.

11. Revocation of grants of representation is provided for in section 76 of the Law of Succession Act, Cap 160, Laws of Kenya. The provision states five(5) grounds upon which a grant may be revoked. These grounds can be collapsed into three. The first is where there are defects in the process of obtaining the grant and where the process is attended by fraud and misrepresentation. The second ground is where there are problems with the administration of the estate, on account of failure to apply for confirmation of grant within the period prescribed, lacking diligence in administration and failing to render a proper account within the prescribed time. The last ground is where the grant has been rendered useless and inoperative by subsequent events.

12. The grounds on the face of the application place the application under the second general ground. The applicants argue that the administrator has failed to render an account contrary to section 83 of the Law of Succession Act.

13. It is alleged that the deceased had left a will, which suggests that representation ought to have been sought based on that will. The failure to disclose that will, and to proceed as if there was none suggests that the process of obtaining the grant was defective. There is also the claim that the applicants' mother was in jail in China and could not have executed the consent in support of the petition as well as that in support of the confirmation application. The petition was lodged in court in 2010, while the media reports were in 2009.

14. I have perused the annexures to the affidavit in support of the application and noted that the newspaper cutting on the persons jailed in China mentions a Jemima Wairimu Wangai. It has not been pleaded that that person is the same as Jemima Wairimu Ng'ang'a. I have also perused the alleged will and noted that the same bears the signature of the purported testator and of the alleged witnesses. I am unable at this stage to rule with finality on its validity, it must therefore be proved in the usual way.

15. A perusal of the lower court file reveals that a majority of the survivors listed in the petition did not consent to the petition by the administrator contrary to Rule 7(7) of the Probate and Administration Rules. Neither were citations taken out for service on those who did not sign the consent.

16. I am satisfied from the material before me that there were problems with the manner the grant was obtained. It would appear that all the persons qualified to apply for representation did not consent to the petition by the administrator. There is also the alleged will. A case has been made out for the revocation of the grant herein.

17. The orders that I am inclined to make in the circumstances are:-

a. **That the grant made in Kiambu SPMCSC No. 293 of 2010 to Jonathan King'ara Ng'ang'a is hereby revoked;**

b. **That as a consequence of (a) above, the orders made in Kiambu SPMCSC No. 293 of 2010**

on 29th August 2013 confirming the said grant are hereby set aside, and the certificate of confirmation of grant processed from the said orders is hereby cancelled;

c. That all or any transactions carried out on the strength of the said certificate of confirmation of grant are hereby annulled;

d. That the court file in Kiambu SPMCSC No. 293 of 2010 shall be returned to the lower court registry with directions that fresh administrators be appointed in that cause in a process that fully complies with the law relating to such appointments during which process the applicants shall be given an opportunity to prove the will allegedly made on 13th March 1999;

e. That the instant cause is hereby exhausted and the court file herein shall accordingly be closed; and

f. That there shall be no order as to costs.

DATED, SIGNED and DELIVERED at NAIROBI this 18TH DAY OF NOVEMBER, 2016.

W. MUSYOKA

JUDGE