



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
FAMILY DIVISION
SUCCESSION CAUSE NO. 711 OF 2008
IN THE MATTER OF THE ESTATE OF KABATA MACHARIA- (DECEASED)

RULING

1. The application for determination is the Summons for Revocation or Annulment of Grant dated 8th April 2008. It is premised on the ground that the administrator has failed to apply for confirmation of grant after due notice.
2. The factual background to the application is set out in the affidavit sworn on 8th April 2008 by the applicant, John Maina Muchai. He avers that the administrator has failed to apply for confirmation of grant despite orders having made compelling him to do so.
3. The grant sought to be revoked was made in Nyahururu SRMCSC No. 238 of 1996. The record reveals that the deceased herein died on 10th August 1996. Representation to his estate was made on 3rd July 1997. An order was made on 29th June 2005 by Kathoka Ngomo, Senior Principal Magistrate, compelling the administrator to apply for confirmation of the grant. A notice was to issue to the administrator to apply for confirmation of the grant.
4. There is an affidavit of service on record sworn on 27th May 2008 indicating that the Summons for Revocation of Grant dated 8th April 2008 was served on the respondent.
5. There is nothing on record to show that the respondent administrator replied to the application dated 27th May 2008.
6. Directions were given on 30th July 2012 that the application be disposed of by way of affidavits and written submissions. The applicant complied with the directions by filing his submissions on 20th June 2013.
7. The application is principally founded on Section 76 (d) (i) (ii) of the Law of Succession Act, which provides as follows:-

“76 A grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by any interested party or of its own motion-

...(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 grant within one year from the date thereof, or such longer period as the court has ordered or allowed; or*
- ii. *to proceed diligently with the administration of the estate...*”

8. There is no evidence from the record before me to indicate whether or not the notice referred to in the order made on 29th June 2005 in Nyahururu **SRMSCNO. 238 of 1996** was ever issued and served on the respondent. Revocation of grant under Section 76(d)(i)(ii) of Act is unlocked by the failure of the administrator to act after due notice. It would appear that the notice was never served on the respondent and thereafter the discretion exercisable under Section 76 (d) (i) (ii) of the Act is not available.

9. I am however concerned that grant was made in the subject cause in 1997 Since then the grant has not been confirmed as the administrator has not moved the court appropriately. Section 71 of the Act envisages that the holder of a grant of representation should apply for its confirmation six (6) months after its making and at least within one (1) year of its making. It is now seventeen (17) years since the said grant was made. To my mind this is a case of gross maladministration, and an administrator would have grossly failed in her duties if seventeen years after the making of a grant she has not sought its confirmation.

10. I am satisfied that a case has been made for revocation of the grant herein. I have noted that the application is not opposed, and therefore the administrator has not explained to court why it has taken her so long before asking for a confirmation of grant.

11. The application dated 8th April 2008 is hereby allowed. The grant made in Nyahururu **SRMCSC NO. 238 of 1996** on 3rd July 1997 is hereby revoked. I hereby appoint Johnson Kamau Kabata and John Maina Muchai the new administrators of the estate of the deceased. A fresh grant of letters of administration intestate shall issue to the two new administrators out of Nyahururu **SRMCSC No. 238 of 1996**. The applicant shall have costs of the application.

DATED, SIGNED and DELIVERED at NAIROBI this 30th DAY OF January 2015.

W. MUSYOKA

JUDGE