



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**SUCCESSION CAUSE NO. 695 OF 2002**

**IN THE MATTER OF THE ESTATE OF HENRY ZACHARIA EDWIN RAMOGO  
(DECEASED)**

**ROSE RAMOGO .....APPLICANT**

**VERSUS**

**ELIJA KOGA RAMOGO .....1<sup>ST</sup> RESPONDENT**

**JOEL ADUMA RAMOGO .....2<sup>ND</sup> RESPONDENT**

**RULING**

1. Before Court for determination is a Summons for revocation and/or annulment of grant dated 19<sup>th</sup> June, 2009 and taken out under **Section 76 Law of Succession Act** and **Rules 44, 63** and **73** of the **Probate and Administration Rules**. The summons seeks orders that the grant of letters of administration herein confirmed by the court on the 17<sup>th</sup> February, 2009 be revoked. That consequent to prayer (3) hereinabove being granted, the Honourable Court be pleased to take Viva Voce evidence, on the issue of distribution only, concerning the Estate of the Deceased.
2. The application is grounded on allegations that the Applicant was not consulted on, nor did she consent to the mode of distribution subject of the confirmation of the grant issued herein. That the consent was entered into by fraud and/or misrepresentation of material facts. The Applicant also alleges that the actions of the Advocate hitherto on record are fraught with **malafides** and that the distribution adopted is discriminative against and is totally unfair to the Applicant and her children. Further that the grant was confirmed pursuant to clear fraud and/or collusion against the Applicant and her children. Lastly that this application has been made in good faith and without unreasonable delay and it is in the interest of justice that the confirmed grant be revoked.
3. The application is supported by the annexed affidavit of ROSE RAMOGO, the Applicant herein, sworn on 19<sup>th</sup> June, 2009. Salient among the averments in the affidavit are that the confirmation of the said grant was made on the basis of an alleged consent, which consent was entered into by the deponent's previous Advocates, without due instructions so to do. Further that the said consent on distribution is clearly discriminative and prejudicial to her interest as a widow who is entitled to a fair share of the estate of the deceased.
4. The application is opposed by the replying affidavit of the Respondent, JOEL ADUMA RAMOGO one of the Administrators, sworn on 14<sup>th</sup> September, 2011. The Respondent avers inter alia, that the Applicant is dishonest and has not disclosed material facts obtaining to the confirmed grant she wants revoked/annulled; that prior to confirmation, all beneficiaries to the estate of the

deceased were involved and consulted including the Applicant who actually executed a consent on 1<sup>st</sup> November, 2002 confirming the proposed mode of distribution. The Respondent asserts that after the said confirmation of grant their sister GRACE ALUOCH NYARKOLAJI ANYIKO, applied to revoke the said grant in an application dated 21<sup>st</sup> July, 2006 and that before the application could be heard and determined the parties engaged in discussions in an effort to resolve the matter amicably.

5. That as a result of the discussions a consent on the mode of distribution was filed in court on 17<sup>th</sup> February, 2009 consequent to which the grant was re confirmed and accordingly rectified on 17<sup>th</sup> February, 2009. Further, that the said distribution was the most comprehensive and it covered and included all the beneficiaries and dependants of the deceased, daughters and grandchildren of the deceased included. That the new distribution was consented to and agreed upon by all parties and their advocates with Ochieng Onyango, Kibet & Ohaga Advocates representing the Applicant herein. The Respondent also avers that the Applicant was all along represented by the said firm of the Advocates and they never acted as though they did not have instructions to act for her, thus the Applicant is estopped from denying having instructed them and is bound by the consent filed on the mode of distribution.
6. The application was disposed of by way of written submissions. It was submitted on behalf of the Applicant, that she did not consent to the mode of distribution the subject of the confirmation dated 17<sup>th</sup> February, 2009 and that she was not consulted on the said distribution. Further, that the said consent was entered into by fraud and/or misrepresentation of the material facts and is discriminative against and /or totally unfair to her and her children.
7. On their part, the Respondents submitted that the Applicant was ably represented by the Firm of Ochieng Onyango, Kibet & Ohaga Advocates in the proceedings giving rise to the consent of 17<sup>th</sup> February, 2009. They submitted that the estate was most well distributed and the Applicant has no ground of complaint on unfair distribution and in any event the Applicant has life interest in the estate which is more than sufficient. It is their submission that the Applicant has established no reason or cause to warrant the revocation or annulment of the grant rectified and confirmed on 17<sup>th</sup> February, 2009. It is also their case that the Applicant has not demonstrated any fraud or concealment of anything material or untrue allegation or shown any other matter that would cause the current grant to be revoked.
8. This court having considered the application, the affidavits on record and the rival written submissions by counsel for the parties, has formed the view that the main issue for consideration is whether the Applicant has made out a case for revocation of the said grant.
9. The Applicant's main contention is that the confirmation of the said grant was made on the basis of an alleged consent, which consent was entered into by her previous Advocates, without due instructions, so to do. Indeed, they contend that the said consent was certainly obtained by misrepresentation, and that it was never communicated unto her by her previous Advocates.
10. In the case of **KENYA COMMERCIAL BANK-LTD VS SPECIALISED ENGINEERING CO. LTD (1982) KLR P. 485**, it was held inter alia:

*(i) That a consent order entered into by counsel is binding on all parties to the proceedings and cannot be set aside or varied unless it is proved that it was obtained by fraud, collusion or by an agreement contrary to the policy of the court or where the consent was given without sufficient material facts or in misapprehension or ignorance of such facts in general for a reason which would enable the court to set aside an agreement.*

*(ii) That a duly instructed advocate has an implied general authority to compromise and settle the action and the client cannot avail himself of any limitation by him of the implied authority to his advocate unless such limitation was brought to the notice of the other side.*

*(iii) That an advocate has general authority to compromise on behalf of his client as long as he is acting bonafide not contrary to express negative direction in the absence of proof of any express negative direction, the order shall be binding.*

*(iv) That the fact that a material fact within the knowledge of a client was not communicated to the advocate when he gave his consent to a court order is not sufficient ground for the client withdrawing his consent to the order before it is passed and entered even if the advocate concedes that he would not have given his consent had he known these facts.*

*(v) That the making by the court of a consent order is not an exercise to be done otherwise than on the basis that the parties fully understand the meaning of the order either personally or through their advocate and when made such an order is not lightly to be set aside or varied save by consent or on one or either of the recognized grounds.*

It is not stated on the record that the Applicant's previous Counsel was not instructed to represent the Applicant in this succession cause. The counsel participated in the making of the said consent order, which the Applicant contends was entered into without her instructions. From the onset it is noteworthy that a client who retains a counsel is bound by any consent given by his/her counsel and cannot turn around and claim that Counsel acted without instructions.

11. The grounds for revocation of a grant of representation are well provided for statutorily. The Law of Succession Act, Cap 160 Laws of Kenya establishes the grounds upon which a grant of representation may be revoked. Under **Section 76 of the said Act a grant of representation whether or not confirmed may at any time be revoked or annulled if the court decides, either on the application by any interested party or of its own motion:-**

**“(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.**
- 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 in advertently.**
- 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 the 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; or**
  - iii. To produce to court within the time prescribed any such inventory or account of administration as is required by the provisions of a paragraph (e) and (g) of section 83 or has produced any such inventory or account which is false in any material particular.**
- e. That the grant has become useless and inoperative through subsequent circumstance**

12. It is therefore the considered view of this court that the Applicant has not established any of the grounds set out in **Section 76 law of Succession Act**. No material has been placed before this court as to warrant the revocation of the said grant, and the court has therefore no reason to exercise its discretion to grant the orders sought herein.

For the foregoing reasons this court finds that the Applicant's application lacks merit and is consequently dismissed with no orders as to costs.

**SIGNED DATED and DELIVERED** in open court this **25<sup>th</sup> day of February 2015.**

**L. A. ACHODE**

**JUDGE**