



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 33 OF 2002

IN THE MATTER OF THE ESTATE OF HARRISON MBURU MUNGAI (DECEASED)

SAMUEL WANYOIKE MUNGAIAPPLICANT

-VERSUS-

SAMUEL NJUNO RUO.....1ST RESPONDENT

ELIZABETH WARINGA KINYANJUI.....2ND RESPONDENT

JUDGMENT

1. The Summons for Revocation of Grant dated 15th November, 2006 and taken out under **Section 76, the Law of Succession Act and Rules 44 & 73, Probate and Administration Rules**, seeks for orders that the Grant of Representation issued to Samuel Njuno Ruo and Elizabeth Waringa Kinyanjui on 18th 2005 and initially issued to Samuel Njuno Ruo and the late Esther Wanjiru Mburu on 12th March 2002 and confirmed on 13th March 2006 be revoked and annulled.
2. The application is grounded on allegations that the Grant was obtained fraudulently by the making of a false statement and/or by the concealment from the court of material facts and by means of untrue allegations of fact essential in point of law to justify the grant.
3. The application is supported by the affidavit of **SAMUEL WANYOIKE MUNGAI**, the Applicant herein, sworn on 15th November 2006. Salient among the averments in the supporting affidavit are that the Applicant is the eldest brother of **Harrison Mburu Mungai** (deceased) herein, while the Respondents are the deceased's brother in-law and sister-in-law respectively. That the Respondents obtained Grant of Letters of Administration for the Estate of the deceased secretly and without the consent of the parents or siblings of the deceased and did not disclose the existence of the said parents and siblings to the court. Further, that the Respondents have no greater right to the Estate of the deceased than the Applicant, his parents and his siblings, since the deceased's wife who was a co-Administrator in the initial Grant issued on 12th March 2002 is also deceased.
4. The Applicant listed the survivors of, the deceased as follows:
 - i. Esther Wanjiru Mburu - widow (deceased)
 - ii. Gladys Wairimu Mburu - Daughter
 - iii. Zipporah Wambui Mburu - Daughter
 - iv. James Mungai Mburu - son
 - v. Mungai Mbatia - father

- vi. Samuel Wanyoike Mungai - brother
- vii. Peter Ngige - brother
- viii. Stephen Ndung'u - brother
- ix. Francis Kang'ethe - brother

5. Opposing the application, Samuel Njuno Ruo and Elizabeth Waringa Kinyanjui the Administrators of the Estate, swore a Replying Affidavit dated 15th February 2007. In the said affidavit they deponed that their petition was published in the Kenya Gazette no. 6226 of 13th August 2004 and that a grant was issued on 18th April 2005 and confirmed on 13th March 2006. They deny concealing or making any untrue allegation of fact in the application for grant and assert that Stephen Ndungu, a brother to the objector and Esther Wanjiru Mburu the widow of the deceased (herself also deceased) were co-administrators before Stephen Ndungu opted out.
6. What is for determination before this court is whether the Applicant/Objector together with his father and siblings are entitled to a share of the Estate of the deceased and whether for reason of their non-inclusion in the list of beneficiaries the grant issued herein should be revoked.
7. The circumstances that can lead to the revocation of grant have been set out in **Section 76 Law of Succession**. For a grant to be revoked either on the application of an interested party or on the court's own motion there must be evidence that the proceedings to obtain the grant were defective in substance, or that the grant was obtained fraudulently by making of false statement, or by concealment of something material to the case, or that the grant was obtained by means of untrue allegations of facts essential in point of law
8. A grant may also be revoked if the person named in the grant has failed to apply for confirmation or to proceed diligently with the administration of the estate. See - **Matheka and anor v Matheka [2005] 1 KLR pg 456**. It may also be revoked if it can be shown to the Court that the person to whom the grant has been issued has failed to produce to the Court such inventory or account of administration as may be required.
9. The clear provisions of **Section 66 Law of Succession** are that when a deceased has died intestate, the Court shall, save as otherwise expressly provided, have a final discretion as to the person or persons to whom a grant of letters of administration shall, in the best interests of all concerned, be made. The court shall however, without prejudice to the said discretion, accept as a general guide the following order of preference:-
 - “(a) **Surviving spouse or spouses, with or without association of other beneficiaries;**
 - b. Other beneficiaries entitled on intestacy, with priority according to their respective beneficial interests as provided by part V of the Law of Succession Act;**
 - (c) The public trustee; and**
 - c. Creditors.”**
10. The Applicant and those he represents are neither children of the deceased nor has it been shown that they were his dependants in the meaning of **Section 29 Law of Succession Act** prior to his death. While the court has the power to make reasonable provision for dependants of the Deceased, the Applicants do not qualify as such dependants since they are adults and were not dependent upon him prior to his death. Even assuming that the Applicant was a dependant of the deceased (which has not been proved) that would not entitle him to a grant in the Estate of the deceased as of legal right.
11. The question of the Objector and his father and siblings having prior right over the respondents does not therefore arise. The respondents have not laid any claim to the assets of the Estate and have deponed at paragraph 21 of their replying affidavit that they have no interest in the Estate, save to preserve it for the children of the Deceased. On the contrary the Objector and his father

and siblings have taken advantage of the children keeping them out of their father's Estate by use of brute force and cannot be trusted to act in the children's best interest.

12. For the avoidance of doubt, the beneficiaries of the deceased in order of priority in this circumstances are the three children of the Deceased. For the foregoing reasons I dismiss the Summons for Revocation and/or annulment of grant dated 15th November 2006 with costs.

SIGNED DATED and **DELIVERED** in open court this **18th day** of **February 2015**.

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L. A. ACHODE

JUDGE