



No. 522/15

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

SUCCESSION CAUSE NO. 54 OF 2004

IN THE MATTER OF THE ESTATE OF **BETH NDUKU (DECEASED)**

**1. MONICA KANINI**

**2. VINCENT MUTUKU SEKE.....PETITIONERS/APPLICANTS**

**VERSUS**

**JANE SUSAN MBATHA KIOKO.....RESPONDENT**

**RULING**

1. Letters of Administration in respect of the estate of **Beth Nduku Kalovoto** (deceased) were issued to **Monica Kanini**, **Vincent Mutuku Seke** and **Jane Susan Mbatha Kioko** and confirmed on the 9<sup>th</sup> March, 2012. The certificate thereof was issued on the 19<sup>th</sup> March, 2012.
2. On the 10<sup>th</sup> February 2014 **Jane Susan Mbatha Kioko** filed an application seeking revocation of the confirmed grant on grounds that:
  - she had been disinherited, yet she was one of the deceased's children ;
  - the confirmation was done without her knowledge;
  - the second administrator, **Vincent Mutuku Seke** is the son of **Angela Nzula Seke** and a grandson of the deceased who was favoured by the mode of distribution making the distribution of the estate discriminatory and fraudulent;
  - The estate should have been equally distributed amongst the children of the deceased;
  - The applicant a person who ought to have inherited was left out and persons not entitled to inherit directly given shares.
3. The applicant swore an affidavit in support of the application whereby she deponed that the mode of distribution was skewed to disinherit her; she was not given an opportunity to stake her claim in her mother's estate; the grant was obtained through untrue allegations of fact essential in law to justify the grant whereby the petitioners untruthfully and maliciously listed **Monica Kanini**, **Angela Nzula Seke**, **Vincent Mutuku Seke**, **Evans Makau** and **Elias Nzioki** as the only survivors, heir and beneficiaries whereas the true heirs are **Jane Susan Mbatha Kioko**, **Monica Kanini** and **Angela Nzula Seke**; the distribution of the assets of the deceased has left her out while she is entitled to 1/3 of the same; the estate should devolve to and vest upon all the three sisters in equal proportions so that other beneficiaries like **Vincent Mutuku Seke** and his brothers inherit their mother's shares and she denied having consented to the confirmation of the grant and mode of distribution of the estate.

4. The application is unopposed. Even if the application is unopposed it is imperative to interrogate what transpired in this matter. This is a Petition that was filed by **Monica Kanini Maweu** and **Vincent Mutuku Seke**. Three (3) persons are listed as survivors of the estate of the deceased.
  - Monica Kanini Maweu
  - Angela Nzula Seke
  - Jane Susan Mbatha
5. There is a letter written by **Angela** authorizing the two (2) Petitioners, his sister and son respectively to take out Letters of Administration. No consent to making of the grant was obtained from the applicant. On the 29<sup>th</sup> April, 2004 a Grant of Letters of Administration was issued to the Petitioners **Monica Kanini** and **Vincent Mutuku Seke**.
6. The applicant moved the court on the 23<sup>rd</sup> March, 2011 by an application filed on 24<sup>th</sup> March, 2011 seeking revocation of the grant issued on the ground that it was obtained fraudulently by concealment of some material facts from the court and the fact that the applicant consent had not been sought.
7. Consequently, parties entered into a consent dated the 11<sup>th</sup> April, 2011 whereby prayer 1 and 2 of the application was allowed, hence the grant issued being revoked and a fresh one issued to include the applicant as one of the administrators of the estate of the deceased.
8. On the 13<sup>th</sup> April 2011 a fresh grant was issued to that effect, on the 11<sup>th</sup> April 2012 the Petitioners (**Monica Kanini and Vincent Mutuku Seke**) filed an application seeking revocation of the grant to remove the name of the applicant as an administratrix of the estate of the deceased. The applicant filed a replying affidavit thereto stating inter alia that the application had no legal basis. The application was not prosecuted.
9. On the 8<sup>th</sup> November, 2011 two (2) of the administrators to the estate and petitioners filed summons for confirmation of the grant. The name of the applicant was omitted as a beneficiary of the estate. Names appearing are:-
  - Monica Kanini Mawia – daughter
  - Angela Nzula Seke – daughter
  - Vincent Mutuku Seke – Grandson
  - Evans Makau – Grandson
  - Ellis Nzioki – Grandson
10. No consent to confirmation of grant was obtained from the applicant. She was not given any share of the estate contrary to the law.
11. Beneficiaries whose names were indicated in the affidavit appeared before **Dulu, J** having agreed to the proposed mode of distribution. The grant was subsequently confirmed.
12. According to **Section 76** of the **Law of Succession Act**, a grant of representation, whether confirmed or not may be revoked if it was obtained fraudulently by making of a false statement or by the concealment from the court of something material to the case.
13. At the stage of confirmation of the grant it was not disclosed that the applicant herein was an administratrix of the estate and a beneficiary of the same. Following the concealment of that fact she was not given an opportunity of participating in the distribution of the Estate of the Deceased. In the circumstances the confirmed grant is hereby revoked. Parties are directed to file fresh summons for confirmation to include all beneficiaries
14. Costs of the application shall be in the cause.

**DATED, SIGNED and DELIVERED at MACHAKOS this 17<sup>TH</sup> day of FEBRUARY, 2015.**

**L.N. MUTENDE**

**JUDGE**