



REPUBLIC OF KENYA

IN THE HIGH COURT AT MURANG'A

SUCCESSION CAUSE NO. 48 OF 2012

(IN THE MATTER OF THE ESTATE OF MWAURA GITHII (DECEASED))

JOSEPHINE NYAMBURA OBJECTOR/APPLICANT

VERSUS

DAVID MWARA NJUGUNA PETITIONER/RESPONDENT

JUDGMENT

The applicant filed a summons for revocation or annulment of grant dated 17th March 2011 seeking revocation or annulment of grant made to David Mwaura Njuguna by the subordinate court on 17th December 2010 on the grounds that the grant was obtained fraudulently by making of a false statement or by concealment from the court of something material to the case; that the proceedings to obtain the grant were defective; and, that the respondent materially misrepresented to the court and failed to disclose the rightful heirs or legal beneficiaries of the deceased's estate. The application was brought under **Rule 44 (1)** of the **Probate and Administration Rules** and **section 76** of the **Law of Succession Act**.

In the affidavit sworn by the applicant in support of her application, she deposed that she was the wife of Mwaura Githii (the deceased) who died on 6th June 2009 and whose estate is the subject of the grant sought to be revoked; she also deposed that together with the deceased, they had five children. The applicant has alleged that, the respondent petitioned for and was granted letters of administration of her deceased's husband estate without her knowledge or consent or without citing her or any of the other survivors of the deceased's estate despite the fact that he was aware of their existence. Worse still, the respondent was not related to the deceased in any way and in the applicant's view, he was a stranger to the estate.

As the respondent petitioned for the grant in **Kigumo Principal Magistrates' Court Succession Cause No. 1 of 2010** the applicant applied for the grant of letters of administration of the same estate in **Kigumo Principal Magistrates' Court Succession Cause No. 57 of 2010** and it is while she was pursuing the grant in this cause that she discovered that the grant had not only been made to the respondent but that it had also been confirmed.

One of the documents attached to the affidavit in support of the application for nullification or revocation of the grant is a certificate of confirmation showing that land parcel number **Nyandarua/Wanjohi/2751** which, according to the petition filed by the respondent, was the only asset comprising the deceased's estate was to be registered in the name of **David Mwaura Njuguna** as the sole proprietor. The applicant has deposed that by the time of the deceased's demise, this parcel of land was not in existence and that it had been sub-divided into two different parcels, which she has identified as parcel numbers 2885 and 2886, a fact that the respondent did not disclose to the court. It is the applicant's case, therefore, that the

grant was not only obtained fraudulently by making of a false statement or by concealment from the court of something material to the case but also that the proceedings to obtain the grant itself were defective.

The summons was served on the respondent and there is an affidavit of service on record to that effect; there is also an affidavit of service showing that the respondent was served with the date for directions of the manner of disposal of the applicant's summons. The appellant did not make any appearance and neither did he file any response to the applicant's summons. In the absence of any sort of response from the respondent, the summons can properly be considered as unopposed.

Pursuant to the directions given on the manner of hearing the summons, counsel for that applicant filed written submissions which I have duly considered in this judgment.

Section 76 of the Law of Succession Act provides:-

A grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by an 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 untrue allegation of a fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently;

(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 the court, within the time prescribed, any such inventory or account of administration as is required by the provisions of paragraphs(e) and (g) of section 83 or has produced any such inventory or account which is false in any material particular; or

(e) the grant has become useless and inoperative through subsequent circumstances.

The uncontroverted facts in support of the applicant's summons demonstrate that the grant obtained by the respondent was tainted in at least three of the ways that have been statutorily recognised as the grounds upon which the grant may be revoked. If the respondent suppressed from the court the information that he is not related to the deceased in any way; that it is the applicant and her children who are the rightful heirs and beneficiaries of the deceased's estate and, that land parcel **Nyandarua/Wanjohi/2751** does not exist and did not so exist at the deceased's demise, then the grant that was subsequently obtained can validly be revoked or annulled on either grounds stated in subsections **(a), (b) or (c) of section 76 of the Act.**

In the premises I find that the applicant's summons dated 17th March, 2011 is merited and is hereby allowed; accordingly, the grant of letters of administration in respect of the estate of **Mwaura Githii** made to **David Mwaura Njuguna** on 27th April, 2010 and confirmed on 16th December, 2010 is hereby revoked and/or annulled. There is no order as to costs.

I must mention here that this file was one of the two files that were mistakenly mixed up with the rest of the files slotted for action by the parties and which had been transferred from the High Court in Nyeri to

Murang'a soon after the establishment High Court station at Murang'a; ordinarily, it should have immediately been brought to the judge's chambers for the writing of this judgment when the judgment date was issued on 18th April, 2013. The delay in the delivery of this judgment was therefore not deliberate and is highly regretted.

Dated and signed this 19th January, 2015

Ngaah Jairus

JUDGE

Read and delivered in open court this 13th day of February, 2015

H.P. Waweru

JUDGE