



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NYERI
SUCCESSION CAUSE NO. 681 OF 2011

(IN THE MATTER OF THE ESTATE OF CHARLES MUNUHE THUITA alias MUNUHE s/o THUITA)

MURIUKI WAHOME.....APPLICANT/ADMINISTRATOR

VERSUS

FELIX KING'URU MUNUHE.....RESPONDENT

RULING

By a summons headed “summons for revocation or annulment of grant” dated 3rd December, 2012 the applicant has sought for the following orders:

“1. That the order made on 23rd November, 2012 by this honourable court for confirmation of the grant be revoked on the grounds that the first administrator one Felix King’uru Munuhe distributed the estate of the deceased without the knowledge of the applicant thus messing the whole process of the matter.

2. That the estate of the deceased should be shared in accordance with an agreement reached by all parties concerned.”

In the affidavit sworn in support of the summons, the applicant says that he is one of the administrators of the estate of the deceased and that the estate has been distributed.

The applicant is contesting the inclusion of one Esther Mirigo Wahome in the distribution of the estate of the deceased on the ground that she was not one of the wives of the deceased.

The applicant has also sworn that the grant was confirmed on 23rd November, 2012 and that he wants it revoked so that all the parties can agree on the sharing out of the deceased’s estate.

Esther Wahome Mirigo swore a replying affidavit to the summons saying that the estate in issue belongs to her father-in-law and that she is the wife of one of his children, Wahome Munuhe and also that the applicant is her son. She contests the allegation that her husband had another wife in the name of Nancy Muthoni Wahome. She has asked this court to disregard the applicant’s application and the estate be distributed as ordered by the court.

The record indicates that the grant of letters of administration was made in the joint names of the applicant, Muriuki Munuhe, the respondent, Felix King’uru Kinyua, Jeniffer Wathiti Kagiri and John King’uru Kinyua. This grant was confirmed on 23rd November, 2012 and according to the schedule of

distribution of the estate each of these administrators together with one Lydia Gathigia Wahome received an equal share of the estate.

The applicant's application did not cite any provision of the law under which it was filed in court; it is assumed that since he is seeking for revocation or annulment of the grant then it must have been made under **section 76 of the Law of Succession Act** for that is the only provision in law under which a grant, whether confirmed or not may be annulled. That section 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.

This particular provision of the law demonstrates that the grounds upon which the grant may be revoked or nullified are statutory and it is incumbent upon any applicant seeking for such nullification or revocation to point out which of these grounds he is invoking in his application.

The applicant in this application has not cited any of these grounds and therefore the application is outrightly groundless; and if the application is without any basis it is a non-starter *ab initio* and should not have been filed in the first place.

I have noted that the applicant himself was appointed a co-administrator by the court; if he was not satisfied with the order of the court granting him and the rest of the co-administrators letters of administration in respect of the deceased's estate, then the appropriate step to take would have been to appeal against that order and not to file an application for revocation or annulment of that grant.

If it is to be assumed that the applicant is contesting the distribution of the estate, he would still not have any valid ground upon which to dispute the distribution. The record shows that the applicant was in court on 23rd November, 2012 when confirmation proceedings were taken and the grant was confirmed and, there is no evidence that he objected to or protested against the grant being confirmed or that he had any objection to the distribution of the estate as proposed in the affidavit in the summons for confirmation of grant.

It was incumbent upon the applicant to file an affidavit of protest as is required under **Rule 40(8) of the Probate and Administration Rules** if he had anything against the confirmation of grant and the

proposed distribution. In the absence of such a protest, it is assumed that he was satisfied with the confirmation of the grant and it is a bit late in the day to come back to challenge the confirmation order. For these reasons I do not find any merit in the applicant's application and it is therefore dismissed with costs.

Dated, signed and delivered in open court this 13th day of March, 2015

Ngaah Jairus

JUDGE