



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS

SUCCESSION CAUSE NO. 1878 OF 2005

IN THE MATTER OF THE ESTATE OF MIRIAM NJOKI GACHUHI (DECEASED)

JOHN KARUMWA MAINA.....APPLICANT

Versus

SUSAN WANJIRU MWANGI.....RESPONDENT

RULING

1. The applicant JOHN KARUMWA MAINA filed this application dated 8th July 2005 under **section 76** of the **Law of Succession Act (Cap 160)** and **rule 73** of the **Probate and Administration Rules** seeking to have the grant of letters of administration issued to the petitioner ELIJAH MWANGI GACHUHI on 11th June 2004 revoked and or annulled. The application was based on the grounds that:-

- a. the grant was obtained fraudulently by the making of false statements and the concealment from the Court of material facts;
- b. the proceedings to obtain the grant were defective in substance; and
- c. the grant was obtained by means of untrue allegations of facts essential in law to justify the grant.

2. The background of this case is that the deceased MIRIAM NJOKI GACHUHI died intestate on 23rd February 2002. There was a piece of land Loc12/ sub.Loc4/1691 that was registered jointly in her name and that of MWANGI GACHUHI. The two were married. MWANGI GACHUHI died earlier than the deceased. After the death of the deceased the petitioner (who was the son of MWANGI GACHUHI by another woman) petitioned for grant of letters of administration which were issued to him on 11th June 2004. The grant was confirmed on 12th April 2005. He got the parcel of land.

3. The applicant's case is that the petitioner did not disclose to the Court that the deceased had a married daughter MARY NJERI MUGURO whom he did not involve in the succession proceedings. The petitioner had further not disclosed to the Court that the applicant was the deceased's adopted son. The two, therefore, had been disinherited now that they had not participated in the proceedings. All these allegations were denied by the petitioner and by MARY NJERI MUGURO in the replying papers.

4. It is notable from the proceedings before the subordinate Court in Murang'a (**PM Succession Cause No. 231 of 2003**) that the affidavit that the petitioner swore in support of the petition for the grant he indicated MARY NJERI MUGURO as being one of the survivors of the deceased. It is also material that

on 24th May 2004 the said MARY NJERI MUGURO consented to the grant being confirmed to the petitioner. She swore an affidavit filed on 17th February 2006 in response to this application to confirm that position. More important, the applicant participated in the succession proceedings in the lower court by challenging the grant and application for confirmation. He was not successful. In the affidavit in support of this application he does not disclose his knowledge of the proceedings, or the fact that he took part. When the applicant was unsuccessful in defending the petition in the subordinate court he ought to have appealed.

5. It appears from the record and proceedings that the petitioner died on 20th August 2007. This is why the applicant filed summons dated 5th March 2008 seeking that petitioner be substituted by his widow SUSAN WANJIRU MWANGI. This was to enable this application for revocation and or annulment to proceed. The summons was defended. In a ruling delivered on 7th March 2013 by Justice W.M. Musyoka, the summons was dismissed with costs. The court relied on the decision in **FLORENCE OKUTU NANDWA AND ANOTHER –V- JOHN ATEMBA KOJWA**, Court of Appeal Civil Appeal in **Civil Appeal No. 306 of 1998** at Kisumu where it was held that a court should not issue a grant to a person who has not sought for it. The judge stated as follows:-

“A grant of representation is made in personam. It is specific to the person appointed. It is not transferable to another person. It cannot therefore be transferred from one person to another. The issue of substitution of an administrator with another person should not arise. Where the holder of a grant dies, the grant made to him becomes useless and inoperative, and the grant exists for the purpose only of being revoked. Such grant is revocable under section 76 of the Law of Succession Act. Upon its revocation, a fresh application for grant should be made in the usual way, following procedures laid down in the Law of Succession Act and the Probate and Administration (Rules). I agree with the respondent that there cannot be a substitution of the dead administrator by his wife in the manner proposed by the applicant.”

6. There is on record an order made on 26th March 2014 by Justice Kimaru in the following terms:-

“The court will hear the case as to who shall be the administrator of the estate of the deceased - SUSAN WANJIRU MWANGI shall substitute ELIJAH MWANGI GACHUHI as the petitioner in the case. Hearing on 24th June 2014”.

With respect, the issue of whether or not SUSAN WANJIRU MWANGI could substitute the petitioner had been settled in the decision by Justice Musyoka and there was no application to revisit it. May I point out that it is an enormous responsibility to be the administrator of the estate of a deceased person. The duties by such an administrator are enumerated in **section 83** of the **Act**. Under **section 95** of the **Act** an administrator runs the risk of being fined or being jailed if he fails to administer the estate in the manner provided by the law. It is for these reasons, among others, that the position of administrator of an estate cannot be imposed on a person who has not sought the appointment.

7. In conclusion, the application dated 8th July 2015 is misconceived and incompetent and does not have a respondent. But more important, it lacks merits as the allegations in the grounds were not proved. It is hereby dismissed with costs.

DATED at NAIROBI this 13th day of April 2015

A.O. MUCHELULE

JUDGE

DELIVERED at NAIROBI this 16th day of April 2015

W. MUSYOKA

JUDGE