



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 514 OF 2010

IN THE MATTER OF THE ESTATE OF GEORGE NJENGA KURIA (DECEASED)

LUCY MURUGI KURIAOBJECTOR/APPLICANTS

VERSUS

ROSE NYAKANG'U NJENGA

JOSEPH NDUNG'U KIRARUADMINISTRATORS/RESPONDENTS

R U L I N G

1. The application for determination before this Court is dated 22nd November, 2010 and is brought by way of Summons for Revocation of Grant. It is brought under **Rule 44(1)** and **Section 76** of the **Law of Succession Act, Cap 160, Laws of Kenya**. In the main, the Applicant seeks from Court, orders that the Letters of Administration of the Estate of George Njenga Kuria granted to Rose Nyakangu Njenga and Joseph Ndung'u Kiraru on 13th August, 2010 be revoked and that she be substituted or added as an Administrator.
2. That Objector also prays that all the deceased's dues with Ministry of Health, Afya Co-operative Savings and Credit Society, other Societies or Pension Schemes, Kenya Commercial Bank Ltd Kikuyu Branch, other banks or financial institutions and all accounts now operated by the Administrators be restricted or frozen forthwith, pending hearing and determination of this application. Further that the Administrators be compelled to pay her Kshs.291.350/= plus legal costs of Kshs.50,000/= incurred as hospital debt due to her, or in the alternative orders be issued to the bank to release the sum of Kshs.341,350/= to her.
3. The application is based on grounds that the Objector is a creditor to the Estate in the sum of Kshs.291,350/=; that she has been excluded from the list of beneficiaries and that the Administrators have started withdrawing the dues of the deceased.
4. The application is supported, by the affidavit of the Objector, sworn on 22nd November 2010. In her affidavit, she has made several averments. pertinent among them are that; she is the mother of the deceased who, prior to his demise, worked with the Ministry of Health; that on 7th June 2009 the deceased was hospitalized in various health facilities incurring a huge bill of Kshs.611,581/=; that the Objector through an agreement between the deceased and his wife, the first Respondent, lent them a sum Kshs.316,000/= which was to be refunded later. That during the burial arrangement, the committee refunded her Kshs.24,650/= leaving a balance of Kshs.291,350/= which was to be recovered from the deceased's dues, and it was also agreed that the Objector would be one of the Administrators of the Estate.

5. The Objector further deponed that she came to learn that the Respondents had filed HCC SUCC No. 514 of 2010 without her knowledge. That her attempts to stop the gazettement at Government Printers did not bear fruit and the cause was gazetted on 9th July 2010. The Objector also learnt that the Respondents had collected a sum of Kshs,443,684/= from Afya Co-op Society, and fears that the deceased's proceeds will be wasted and other accounts will be depleted to her exclusion, leaving her to repay the loan. She therefore prays for her dues and in the alternative she be appointed or substituted as Administrator in order to protect her interests.
6. In opposition to the application, the first Respondent filed a Replying Affidavit dated 3rd January 2011 and admitted that she is aware that the Objector paid the shortfall on the deceased's medical bill but was not aware that the Objector borrowed the said Kshs.316,000/=. She denied having entered into an agreement with the Objector for the repayment of Kshs.291,350/=:, but is willing to resolve the matter amicably for the sake of her two children. Further that there was no agreement that the Objector would be involved in obtaining Letters of Administration.
7. She further averred that the Law of Succession provides that where a husband dies intestate, the widow stands first in line for purposes of taking out Letters of Administration. That the application dated 22nd November, 2010 does not reveal any good reason why the grant should be revoked other than that the Objector is a creditor to the Estate and she needs to be paid. The Respondent stated that prior to moving into a rented house, the Respondent and the deceased lived in their own four rooms built on the objectors plot. That the deceased used to collect rent of Kshs.9,000/= from the said 4 rooms just before his demise.
8. The Respondent further averred that when the deceased fell sick, the Objector began to collect and keep the rent for the 4 rooms since June 2009 to date and does not remit it to her. The Respondent contends that the Objector cannot claim Kshs.291,350/- and yet she has kept Kshs.162,000/= being rent from the 4 rooms as at December, 2010.
9. In her submissions M/s. Kitonga learned counsel for the Respondent reiterated what the Respondent had stated in her replying affidavit that under Section 66 of the Law of Succession Act, a surviving spouse with or without association of the other beneficiaries stands first in line in taking out the Letters of Administration. Secondly, that under Section 35(1) Law of Succession Act, the surviving spouse has a life interest in the whole residue of the net intestate estate subject to re-marriage on the part of the widow.
10. She argued that the best alternative for the Objector if she wants to share in the Estate is to file for dependency but that in any case, the court would have to take into account the circumstances listed in **Section 28** of the **Law of Succession Act** and also note the nature and amount of the deceased's property; any past, present or future capital or income from any source of the dependant; the existing and future means and needs of the dependant; whether the deceased had made any advancement or other gift to the dependant during his lifetime; the conduct of the dependant in relation to the deceased and the situation and circumstances of the deceased's other dependants and the beneficiaries under any will.
11. That the court would have to consider the general circumstances of the case, including, so far as can be ascertained, the testator's reasons for not making provision for the dependant. In the instant cause M/s Kitonga observes that at all times, it was the Objector who was giving support to the deceased and not the other way round. In view of the foregoing, the Respondent urged the court not to revoke the Grant of Letters of Administration as this would cause unnecessary hardship to the widow and the children.
12. No submissions were filed on behalf of the Applicant.
13. I have considered the summons before the court together with the affidavits for and against, as well as the rival submissions of the respective parties and find that the question for determination before this court is whether the Applicant/Objector is entitled to a share of the Estate of the

deceased and whether for reason of her non-inclusion as an administrator the grant issued herein should be revoked and/or annulled.

14. 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.

15. 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.

16. 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 the 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

d. Creditors.”

17. In the petition before me the widow of the deceased has been granted the letters of Administration as co-administrator with one Joseph Ndungu Kiraru. The Applicant's contention is that the grant of Letters of Administration should be revoked or, in the alternative, she should be included as a co-administrator because she is a creditor to the Estate of the deceased. After careful consideration of the arguments placed before me I find that this application has not satisfied the requirements of Section 76 Law of Succession Act to merit the revocation of the grant.

18. It is my view that the Creditor's interest can be taken care of during the confirmation of the grant. At that stage the Administrator should list all known properties of the deceased and the Creditor should render true accounts pertaining to the four rooms said to have been erected on her plot by the deceased, from which the deceased was said to have been collecting a total of Kshs.9000/= per month in rent before his demise. It is in the pleadings that the Creditor has since taken over the collection of the said rent.

For the foregoing reasons I find that the application is lacking in merit and is dismissed accordingly.

SIGNED DATED and DELIVERED in open court this 23rd day of September 2015.

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L. A. ACHODE

JUDGE