



REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI
SUCCESSION CAUSE NO1946 OF 2014
IN THE MATTER OF THE ESTATE OF E K K (DECEASED)

O A W.....APPLICANT

VERSUS

M W K1ST RESPONDENT

E R KA 2ND RESPONDENT

RULING

1. The application dated 16th July 2014 is brought under Section 76 of the Laws of Succession Cap 160, Rule 44(1) of the probate and Administration rules, Order 40 rules 1, 2 and 3 and Order 51 rule 1 and 10 of the Civil procedure Rules. The applicant seeks the following orders;
 - i. Spent
 - ii. That the applicant herein be joined in this succession cause as beneficiary.
 - iii. That the Grant of letters of administration for the estate of E K K issued on 12th February 2009 and confirmation granted on 14th September 2011 be revoked on the ground that they were obtained fraudulently and without disclosure of material facts.
 - iv. That an injunction do issue restraining the respondents by themselves agents' servants or in any other manner whatsoever from dealing in any way with those parcels of Land known as **LR No. Karai/1616 and Plot No. 36 Kamangu** Market or any subdivision thereof.
 - v. That costs be provided.
2. The application is based on grounds that the grant was obtained and confirmed fraudulently, that the applicant is one of the beneficiaries of the deceased's property and was not informed about the proceedings herein; that the applicant together with his siblings are the grand children of the deceased. That his step mother, the 2nd respondent conspired with his grandmother the 1st respondent to go for succession cause got the confirmation of grant without the applicant or his sibling's knowledge. That unless the application is granted the respondents will further subdivide and sell the suit premises occasioning the applicant irreparable loss and that he stands to be disinherited in the process.
3. At the hearing of this matter the applicant informed the Court that they were seeking prayers 2 and 4 of the application under consideration.
4. In his supporting affidavit dated the 16th of July 2014, the applicant avers that the deceased was his grandfather died on 9th February 2001 and letters of administration were made to E R K his step mother and M W K his grandmother and subsequently confirmed on 14th September 2001. He

avers that the said grant and confirmation of grant was obtained fraudulently as some of the beneficiaries were left out. That neither he, his siblings or parents were consulted, that the 2nd respondent misrepresented herself as the daughter of the deceased's daughter and not sister in law. That his mother Hellen Wanjiku Karanja was his father's 1st wife and out of the said union he and his siblings namely Jane Wanja Wanjiku, F W W, E W and P N W were born but the parents later separated. That his father has 9 children in total 5 from the 1st wife and 4 from his 2nd wife with him being the only son in the 1st house. That when his grandfather died he left a prime property L.R. NO. Karai/Karai/1616 and Plot No.36 Kamangu Market. That the 1st and 2nd respondents have taken up their shares with total disregard of himself and his other siblings and that they were intending to further sub-divide the suit premises transfer and sell and that if the grant is not revoked he stands to suffer irreparable loss.

5. The application was opposed the respondents in their joint replying affidavit filed on 12th August 2014 aver that the application is incompetent, bad in law and an abuse of the court process adding that everything from the application of the grant of representation was done procedurally and legally without fraud or concealment of any material fact. That the grant was confirmed on 14th September 2001 and they proceeded to distribute the deceased's estate to all beneficiaries and most of the beneficiaries have since disposed off or transferred their shares to 3rd parties. They aver that the applicant fails to come within the meaning of a beneficiary or dependant in any form and he has no claim whatsoever on the deceased's estate.
6. The applicant filed written submissions and gave a brief background of this cause culminating to the current application. He points out 3 issues for consideration by this court as follows;
 - i. *Whether the applicant has locus standi to apply for revocation*
 - ii. *Whether the applicant has right over the deceased's estate*
 - iii. *Whether the grant was obtained fraudulently.*
7. On locus he submitted that he is the grandson of the deceased E K K and relied on the case of **The Estate of Gichia Kabiti(deceased) Succession Cause Number 2559 of 2002**, where it was held *that a person qualifies to bring an application for revocation of grant are set out under Section 66 of the Law of Succession Act which comprises of surviving spouse and blood relatives and the applicant being a grandson of the deceased is therefore qualified and has locus standi to bring the current application.* That Samuel Karanja Kuria was the son of Ezekiel Kuria Karanja and having died intestate his children ought to have taken out a grant of representation for argument he relied on the case of **The Estate of Veronica Njoki Wakagoto(deceased) Succession cause Number 1974 of 2008**, where it was held *that the only time grand children can inherit from their grandparents is when the grand child's own parents are dead. The grand children step into the shoes of their parents and take direct share that ought to have gone to the said parents.*
8. On the question of if the grant was obtained fraudulently he submitted that the respondent did not disclose to the court that the S K K had 2 houses when they took out the grant of letters of administration and that he and the respondents rank in equality with or priority to the two respondents. He submitted that Section 76(b) Law of Succession Act clearly states that where a grant has been obtained fraudulently by making false statement or by concealment from the court of something material to the case the grant can be revoked. That the applicant had proved that the said grant was obtained fraudulently and as such the same should be revoked. He referred to Rule 26 of the Probate and Administration Rules which states that a grant of letters of administration is not to be made without giving notice to every other person entitled in the same degree or in priority to the applicant. Where the applicant is entitled to a grant in a degree lesser or equal to that of other persons, the written consent or renunciation of those other persons must be obtained.
9. The main argument in the respondents submissions is that the applicant has not adduced any evidence to prove he is the grandson of the deceased contrary to Section 61 of the Evidence Act as read together with Section 35(2) which provides that certain facts need to be proved and that the same requires corroborating evidence to prove the same and the pleadings in documents shall not be treated as evidence.

10. Having considered the submissions and the law, this Court finds as follows; the applicant claims to be the grandson of the deceased and that his late father S K K was a son to the deceased. He also states that his late father had two houses his mother's H W K and his stepmother E R K each with five and four children respectively. That upon the confirmation of the said grant on 14/9/2011 his stepmother took up her share with utter disregard of him and his other siblings and that his grandmother and his stepmother intend to further subdivide the suit premises and transfer/sell to third parties leaving them with nothing to inherit. The respondent denies that the respondent is a beneficiary and claims to have distributed the estate to the beneficiaries who have since disposed off their shares or transferred the same to third parties.

11. The applicant's claim of being the deceased's grandson is disputed and the respondent avers that the respondent could have annexed a certificate or any other supporting documents to show his linkage to the deceased nor the status of his father S K. The respondent claims that the said parcel of land does not exist as it was subdivided after the confirmation of the said grant and the applicant has been on notice since 12/8/2014 and that the Court granting the said injunction would be in vain.

12. In my view after considering the issues raised the applicant needs to adduce more evidence to support his claim and it is in the interest of justice that this matter be heard viva voce for both the applicant and respondents to support their claims. From the Court records it is not discernable if L .R No. Karai/1616 and Plot No. 36 Kamangu Market still exist as the applicant did not avail to this court a copy of official search to verify the same. As such I find at this point that am unable to grant an injunctions without having clear information on the same. The applicant has failed to show that he has a prima facie case to warrants an injunction being granted at this stage. I therefore order that the parties take directions the matter and to have it heard at the earliest opportune time to enable this court make a sound decision on whether the said grant was obtained fraudulently and without disclosure of material facts and if the said grant should be revoked. Costs shall be in the cause. Orders accordingly.

Dated, signed and delivered this 17th day of *September* 2015.

R. E. OUGO

JUDGE

In the presence of:-

.....**For the Applicant**

.....**For the Respondents**

Ms. Charity

Court Clerk