



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

SUCCESSION CAUSE NO. 183 OF 2004

**IN THE MATTER OF THE ESTATE OF THE LATE ELIZABETH MUWILI
MUMINA(DECEASED)**

BETTY MUOKAAPPLICANT

VERSUS

JULIUS MUMINA

SAMSON KIILU MUMINA

ROSE MUKONYO MUMINA.....RESPONDENTS

RULING

The Petitioner herein filed an application by way of Summons for Revocation and/or Annulment of Grant dated 14th November 2013 seeking the following orders:

1. That the confirmed grant of letters of Administration issued to Julius Mumina Katumo, Samson Kiilu Mumina and Rose Mukonyo Mumina in Machakos succession cause No. 183 of 2004 be revoked and annulled.
2. That the grant of letters of Administration Intestate be issued to Betty Muoka.
3. That the costs of the application be in the estate.

The main grounds for the application are that the grant of letters of administration and the confirmed grant were made fraudulently and by way of concealment from the court of material facts. Further, that the Applicant, being a person of equal priority, did not give her consent to the parties named in the grant to apply for it, nor did she consent to the schedule of distribution presented to the court, and that the confirmation proceedings were undertaken without her participation as a beneficiary.

The Applicant in an affidavit in support of the summons she swore on 14th November 2013 stated that she was the wife to Muoka Mumina who was a son to Elizabeth Muwili Mumina (the Deceased). That her husband Muoka Mumina is also deceased, however that her late husband was left out when the estate was being administered and as such he was not awarded anything. It was averred that the Petitioners did not disclose to the court that the deceased had a son called Muoka Mumina who also left a family entitled to his share.

The Response

The 2nd and 3rd Administrators filed a Replying affidavit sworn by the 2nd Administrator on 24th August 2014, wherein he deponed that Applicant was aware that they had filed the succession cause as they had called a family meeting before filling the same. Further, that before the deceased died, she had proposed in writing before Beth Mukulu Kasema (deceased) and Ruth Muli (deceased) on the mode of distribution of her estate upon his demise, and that the Applicant was given a piece of land at Manza by the deceased where she lives to date.

The Administrators also stated that they had contributed money and bought all the other parcels of land being claimed by the Applicant, and that the court ought to protect their interests in the said land. It was also averred that the administrators have already administered the estate and part of it transferred to third parties who were not parties to the cause, and that the Applicant was not a person of equal priority to the administrators as she was not a child of the deceased.

The Issues and Determination

I have read and carefully considered the pleadings and submissions made by the Petitioner. The issue to be decided is whether the Respondents' confirmed grant should be revoked. The Applicant's Advocates Mulyungi & Mulyungi Advocates in submissions dated 24th April 2015 argued in this regard that it was not in dispute that the Applicant was a wife of one of the beneficiaries of the estate. However, that despite this fact, the administrators did not include her and her children in the list of beneficiaries to the deceased estate.

Secondly, that the grant was issued and confirmed fraudulently and by way of concealment that Muoka Mumina was also a son of the deceased and a beneficiary. The Applicant argued that the administrators should have sought her participation in the succession proceedings by virtue of her being the wife of Muoka Mumina. Lastly, she stated that she had fulfilled the requirements of Section 76 of the Law of Succession Act on annulment of a grant.

On their part the Respondents' Advocates, B.M. Mungata & Company Advocates, in submissions dated 10th June 2015 submitted that the deceased estate apart from Manza Plot No. 384, was held in trust for Julius Mumina and Kiilu Mumina. They also argued that the Applicant had not fulfilled the requirements of section 76 of the Law of Succession Act to warrant the revocation of the grant. They cited the case in **Jesse Kayanga Gatimu vs. Mary Wanjiku Githinji, (2014) eKLR** in support of the position that the Applicant could not bring the present application as she had not obtained the necessary grant to be able to do so as heir of her deceased husband.

This court has jurisdiction to revoke or annul the grant as is clearly set out in section 76 of the Law of Succession Act (Chapter 160 of the Laws of Kenya) which provides as follows:

“A grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by any 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 an 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) that the grant has become useless and inoperative through subsequent circumstances.”

In the present application the Administrators have not denied the averment the Applicant is the wife of a son of the deceased, and have deponed that the Applicant was aware of the succession cause as she attended a family meeting on the same. They also did not bring any documentary or other evidence to support their averments that the Applicant had been given part of the deceased's estate.

I also note that in the summons for confirmation dated 8th May 2006 and filed in Court on 18th May 2006 they indicated a deceased son, one Paul Wambua Mumina as a beneficiary and heir, but not the Applicant's deceased husband. Lastly, section 71 of the Law of Succession Act puts an obligation on holders of a grant to list all persons beneficially entitled in their application for confirmation of grant, which in the circumstances would have included the Applicant as wife of their deceased brother.

I therefore find for the above reasons that the failure to disclose the heirs of the Applicant's deceased husband as beneficiaries constituted non-disclosure of material facts. Whether the deceased had distributed the properties in her life time is a matter that the court is also entitled to know and consider under section 42 of the Law of Succession Act when distributing the estate. This fact however does not relieve the administrators of the duty to make full disclosure of all the beneficiaries.

I accordingly orders as follows to enable the court consider the mode of distribution afresh.

1. I revoke all the Certificates of Confirmation of Grant issued to James Mumina Katumo , Samson Kiilu Mumina and Rose Mukonyo Mumina.
2. The administrators shall file and serve upon the Applicant a fresh summons for confirmation of grant incorporating the Applicant as a beneficiary within thirty (30) days hereof.
3. The Applicant is at liberty to file and serve an affidavit of protest within thirty (30) days from the date of service of the fresh summons.
4. Thereafter the matter shall be fixed for directions before the judge.
5. There shall be no order as to costs.

Orders accordingly.

Dated, signed and delivered in open court at Machakos this 27th day of November 2015.

P. NYAMWEYA

JUDGE