



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MOMBASA
FAMILY DIVISION
SUCCESSION CAUSE NO. 318 OF 2011
IN THE MATTER OF THE ESTATE OF RAMA MATANO MWAURINDA (Deceased)
FATUMA RAMA MWAURINDA
AMINA RAMA MWAURINDA.....PETITIONERS/RESPONDENTS
VERSUS
KUSI MUKAMI MWAURINDA.....OBJECTOR/APPLICANT

RULING

1. Before this Court is a Summons for Revocation of Grant dated 12.6.14 seeking the following orders that:-

- a. The Grant of Letters of Administration to Fatuma Rama Matano and Amina Rama Mwaaurinda made on 7.11.12 be revoked and/or annulled and a new grant of Letters of Administration be issued to include the objector (Kusi Mukami Matano) as an administrator.
- b. The Petition herein be amended by including properties left out and excluding properties wrongly included in the schedule of assets.
- c. That costs of this Summons (Application) be provided for and borne by the Petitioners/Respondents.

The Applicant's Case

2. The Application is supported by the grounds on the face of it as well as the Supporting Affidavit of the Applicant, Kusi Mukami Matano sworn on 8.7.14. The Applicant seeks the revocation of grant on the ground that the same was fraudulently obtained by the making of a false statement/concealment of material facts. The Administrator concealed the fact that the Applicant was a beneficiary to the estate yet they knew of her existence. The Administrators also left out several assets of the deceased's estate and wrongfully included a property not forming part of the estate.

3. The background of the matter herein in a nutshell is that when the Administrators petitioned this Court for a Grant of letters of Administration, they failed to include the Applicant as a beneficiary though they knew that she was a daughter of the deceased. On 3.10.11 the Applicant filed an objection to the making of Grant and was included as a beneficiary pursuant to a consent of the parties recorded in Court on 20.2.12. The Applicant then filed Summons for Rectification of Grant dated 11.4.13 to include assets of

the deceased's estate that had been left out. The said Summons was opposed by the Respondents and the Applicant withdrew the same and filed the current Summons for Revocation.

4. The Applicant depones that the omission by the Respondents of her name shows their ill intent towards her; that the omission of the said assets is prejudicial to the estate; that the estate can only gain by the proposed inclusion; that justice will be served by her inclusion as an administrator of the estate.

5. Ms. Wafula for the Applicant restated the Applicant's above position when the matter came up before me on 27.10.15.

The Respondent's Case

6. The Respondents through Mr. Omollo opposed the Application. Mr. Omollo submitted that the Respondents had no objection to the revocation for purposes of including the omitted assets; that the Respondents however opposed revocation for purposes of appointing the Applicant as administrator. It is Mr. Omollo's submission that if the Applicant wished to be appointed administrator, then she must file a Petition and a notice must be published in the Kenya gazette; that though the assets were not listed in the application for grant, the most crucial stage is at confirmation. He further submitted that the reason why the Respondents have not applied for confirmation of the grant is because they have been bogged down by application upon application.

Determination

7. I have carefully considered the Summons for Revocation and the Supporting Affidavits as well as the oral submissions made by counsel. The Respondents did not file any response to the application in spite of being accorded adequate time to do so. Mr. Omollo submitted before me that the Respondents were not opposed to the inclusion of the properties listed in the Applicant's Affidavit, in the schedule of assets of the estate herein. He however did not address me on the property that was to be excluded from the said schedule. The exclusion therefore remains unchallenged. Consequently, the issue for determination before this Court is whether the Grant of Letters of Administration made to the Respondents herein should be revoked and a new Grant issued to include the Applicant.

8. Section 76 of the Law of Succession Act provides that a grant of representation may be revoked if *inter alia* **the grant was obtained fraudulently by the making of a false statement or by concealment from the Court of something material to the case.**

It is not disputed that the Respondents at the time of filing of the Petition herein concealed from this Court the fact that the Applicant is a beneficiary of the estate. This fact alone would justify revocation of the grant as it amounts to concealment of a material fact as envisaged in Section 76 of the Law of Succession Act. This issue however was fully addressed when a consent was recorded between the parties to include the Applicant as a beneficiary.

9. On the issue of the omitted and wrongly included assets, Mr. Omollo submitted before this Court that the Respondents did not object to the Revocation of Grant for purposes of including the omitted assets. He conceded that the properties may have been omitted but stated that assets of an estate are not listed in the Grant and that the most critical stage is at confirmation. It is my view that the remedy for omitted and wrongfully included assets is summons for rectification and not for revocation. The prayer for revocation must fail. This is a fairly old matter and the distribution of the estate is long overdue. It is my view that the justice of the case requires that the Grant is not disturbed and the estate should forthwith proceed to distribution with the current Administrators.

10. Having made my determination, I wish to comment on Mr. Omollo's contention that the Respondents have not been able to apply for confirmation of the Grant because they have been bogged down with application after application. It is the view of this Court that the Applications herein have been justified given the conduct of the Respondents in this matter. They had excluded the Applicant as a beneficiary of the estate; they have omitted some assets of the estate and have opposed their inclusion and finally they

have wrongly included a property that is not part of the estate.

11. In the result I make the following orders:

a. The prayer for revocation/annulment of the Grant of Letters of Administration to Fatuma Rama Matano and Amina Rama Mwaurinda made on 7.11.12 and for a new grant of Letters of Administration be issued to include the Objector (Kusi Mukami Matano) as an administrator is denied.

b. The following properties listed in the Supporting Affidavit of the Applicant sworn on 8.7.14 are hereby included in the schedule of assets of the estate of the deceased:

i. Kwale/Diani Beach/1721; 1722; 1723 (Orig 654);

ii. Kwale/Ukunda/3577 CR 11374;

iii. Kwale/Ukunda/838

iv. Kwale/Ukunda/1452

v. Kwale/Diani Complex/36

vi. Mwakirunge/554

vii. Mikajuni/623

c. The following property listed in the supporting affidavit of the Applicant sworn on 8.7.14 is hereby excluded in the schedule of assets of the estate of the deceased.

i. Kwale/Ukunda/2860

d. The Administrators shall file Summons for Confirmation of Grant clearly setting out the mode of distribution of the estate within 30 days of the date hereof. The matter shall be mentioned on 11.2.16 to confirm compliance and for further directions.

e. Costs shall be in the cause.

DATED, SIGNED and DELIVERED in MOMBASA THIS 8TH DAY OF DECEMBER, 2015.

M. THANDE

JUDGE

In the presence of: -

..... **for the Applicant**

..... **for the Respondent**

..... **Court Assistant**