

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO: 1570 OF 2008

IN THE ESTATE OF STEPHEN KIMWAKI – (DECEASED)

RULING

1. The application I am called upon to determine is the summons for revocation of grant, grounded on *Section 76* of the Law of Succession Act, dated 12th August 2008. It seeks revocation of a grant of letters of administration intestate made on 12th September 2006 to Francis Ndichu Kimwaki in **Kiambu SPM CSC No. 148 of 2006**.
2. The applicant principally argues that the process of obtaining the grant was defective and was attended by fraud. She says that she was not consulted and that the signature appearing in **Form P&A No. 38** purported to be hers was a forgery. She also argues that the alleged consents from the survivors were forgeries. There is also the argument that the value of the estate exceeds the pecuniary jurisdiction set for magistrates court, that is to say Kshs.100,000.00 She also accuses the administrators of mismanagement of the estate. She would like the grant revoked or alternatively that she be co-joined as administrator.
3. The application was served on the administrator, who has filed an affidavit in reply sworn on 24th September 2008. He denies the allegations about the consents being forgeries. He asserts that the applicant did sign the consent forms and that she is only dishonestly denying her signature on the document.
4. While the revocation application was still pending, Rawal J on 7th October 2008 directed that the Kiambu file be brought before this court and ordered the administrator to file an application for the confirmation of the grant. He was given 30 days to do so. This was rather curious given that there was a pending application for revocation of the grant sought to be confirmed. This development would explain what happened subsequently.
5. The administrator then filed a summons for confirmation on 13th November 2008 dated 10th November 2008.
6. Upon being served with the said application, the applicant in the revocation application filed a replying affidavit sworn on 27th March 2009. In the said affidavit, the applicant in effect protested against the proposed confirmation on the grant on several grounds, which I need not discuss in his ruling. This protest was not surprising given that the confirmation application was filed before her revocation application had been disposed of.
7. Both applications are still pending. In the interests of justice the revocation application should be disposed of first. The applicant in my view appears to be disgruntled because she was left out of administration.
8. To move the matter forward, I will make the following orders:-
 1. That the grant made on 12th September 2006 is hereby revoked.
 2. That a fresh grant of letters of administration intestate shall issue jointly to Francis Ndichu Kimwaki and Rose Wangari Kimwaki.
 3. That the summons for confirmation of grant dated 10th November 2008 is hereby struck out and expunged from the record.

4. That the new administrators shall file a fresh application for confirmation of the grant made to them within 30 days of the date of this ruling.
5. That the matter shall be mentioned after 30 days for compliance.
6. That there shall be no order for costs.

DATED, SIGNED and DELIVERED at NAIROBI this 31st DAY OF January, 2014.

W. MUSYOKA

JUDGE