



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KITALE**

**SUCCESSION CAUSE NO. 239 OF 2006**

**MOHAMUD FARAH MAGAN ..... DECEASED**

**AND**

**MOHMOUD HASSAN FARAH..... APPLICANT**

**J U D G M E N T**

The Applicant /Plaintiff, **Halima Kahin Warsame**, took out summons for revocation of grant of letters of administration instate against the Respondent/Defendant, **Mahmoud Hassan Farah**, who was granted letters of administration instate respecting the estate of the late Hassan Farah Hagan (deceased) on the 8th December, 2003.

The summons dated 3rd November, 2006 are grounded on two factors viz;-

1. ***That, the proceedings to obtain the grant were defective in substance.***
2. ***That, the grant was obtained fraudulently by making false statements and concealing material facts in that the respondent is not dependant or beneficiary of the deceased and that the deceased died on 8th December, 2003 and not 15th May, 2001. Further, the deceased was survived by the applicant (a half sister), two sisters Amina Farah and Asha Kahim and a wife Hibaq Mohamud.***

The affidavit in support of the summons, was deponed by the applicant on the 3rd November, 2006. It is therein averred that the deceased died on 8th December, 2003 after which the respondent applied for grant of letters of administration respecting his estate. The application was granted by the Resident Magistrate's court at Lodwar which could only determine succession matters whose net value did not exceed Kshs.100,000/= . That, the deceased was survived by the applicant and others who are his dependants and beneficiaries of his estate and that his assets were worth approximately Kshs.3 million.

That, the assets consisted of plot No. 5 at Kainuk market on which stands a hotel and lodgings, plot No. 44 at Kainuk market which is undeveloped, rental income from the postal corporation held by the public trustee Lodwar, income from Safaricom for a mast on the said plot No. 51, electronic items, sixty goats, furniture, beddings and kitchen utensils situated in the hotel aforementioned. It is further averred in the supporting affidavit that the Resident Magistrate court at Lodwar did not have the jurisdiction to issue the grant and that the respondent concealed from the court that he was neither a child nor a defendant of the deceased. That, the respondent also concealed from the court that the deceased was survived by living dependants including the applicant, two sisters and a wife. That, the deceased was a Muslim and therefore, the applicant commenced succession proceedings before the Kadhis court in Eldoret but following advice from her lawyers, the matter could not continue in that court which lacked necessary jurisdiction.

The applicant therefore prays for the revocation of the grant issued to the respondent and for a fresh grant made in her name and that of any beneficiary or as the court may deem appropriate.

From the record, it would appear that the respondent has never entered appearance and/or filed a response in this matter despite having been served at one time by way of a newspaper advertisement

On 12th November, 2009, the court directed that the summons for revocation be heard by way of "Viva voce" evidence. Since then, the matter came up for hearing on several occasions but was adjourned mostly due to the absence of the respondent. Finally, on the 29th January, 2014, when the matter came up for hearing, **Mr Matin Wanyonyi** learned Counsel for the applicant informed this court that several attempts to serve the respondent have been unsuccessful due to the fact that the respondent may have relocated to Tanzania and was concealing his presence to avoid service. Learned Counsel further informed the court that two witnesses had travelled from Loitokitok and Moyale for the hearing of the case.

Given the circumstances, the court found it fit to order that the matter be heard to avoid further delays deliberately occasioned by the respondent as implied by the applicant.

In her evidence, the applicant **Halima Kahim Warsame (PW1)**, stated respondent obtained letters of administration of the estate of the deceased yet he was not a relative but a stranger. She contended that the respondent was not a son of the deceased but was merely an employee who took advantage of the absence of the deceased's family to represent himself to the Turkana district administration as the son and only defendant of the deceased. He also proceeded to the Lodwar court where he obtained the subject grant by fraud and concealment of material facts.

Halima (PW1) also contended that the deceased had four (4) wives but was never blessed with children. One of the wives has since died while the others have since re-married. That, it is her (PW1) and her siblings who are entitled to benefit from the estate of their late brother. She (PW1) said that the deceased had three plots at Kainuk, Turkana South District, she produced allotment letters (PE. Ex. 1& 2) in respect of plots No. 5 and 51 at Kainuk and said that the value of the estate of the deceased was more than Kshs.1 (one) million. She also stated that she was frustrated by the Kadhis court in favour of the respondent while her application was never heard.

The applicant (PW1) went on to state that they were not aware of the Lodwar case in which the respondent obtained the material grant and that, after obtaining necessary orders, the respondent became inaccessibly.

He could not be traced and has since frustrated all efforts to serve him with any court process. The applicant prays that the grant obtained by the respondent be revoked and that a first grant of letters of administration respecting the estate of the deceased be issued to her and her sister. Amina Farah, informed the court that she fully associated herself with all that was stated by the applicant and adopted the same as her evidence in court. The foregoing evidence by the applicant as supported by Amina (PW2) was not controverted due to the failure of the respondent to enter appearance in this matter or even to appear at the hearing of the summons.

Be that as it may, the respondent moved under the law of Succession Act (Cap 160 L.O.K) to obtain the disputed granted at the Lodwar Magistrate's court vide Succession cause No. 5 of 2003. The relevant file was availed to this court and it shows that the grant was issued on 18th July 2006 and on the 28th July, 2006, the necessary notice under section 73 of the law of Succession Act was issued. However, there is no indication whatsoever that the grant was ever confirmed.

The affidavit in support of the application for the grant dated 24th March, 2006, indicated that the respondent, Mohamud Hassan Farah, was the only surviving dependant of the deceased. He represented himself as the son of the deceased and indicated that the deceased had a plot valued at Kshs.100,000/=. The description of the plot was not indicated.

So far as the value of the estate was Kshs.100,000/= the magistrate's court at Lodwar had the necessary jurisdiction to issue the grant. However, it has been stated herein that the value of the deceased's estate was in excess of Kshs.1 (one) million, meaning that the court at Lodwar would not have acted if the correct information had been given by the respondent at the time of applying for the grant. The evidence adduced herein when viewed in the light of the information given by the respondent while applying for the material grant clearly indicates that the respondent was not candid and that he misled the court by concealing the fact that he was not a son of the deceased, that the deceased left behind his siblings and wives and that the deceased had more than one plot.

In essence, the disputed granted was obtained by fraud and concealment of material facts on the part of the respondent who was clearly a stranger with regard to the administration of the estate of the deceased. If anything, the respondent defrauded the rightful beneficiaries of the estate of the deceased including the applicant and her sisters. His (respondents') action was a criminal act which ought to have been reported to the appropriate authority for necessary action since he was not possessed of any capacity to even attempt to obtain grant of letters of administration respecting the estate the deceased whom he was not related to.

In sum, this application is merited such that the grant issued to the respondent, dated 20th July, 2006 be and is hereby annulled and revoked to pave way for a fresh application for issuance of a fresh grant to any of the surviving relatives of the deceased including the applicant and her siblings.

The respondent is condemned to pay the costs of this application and is from now henceforth restrained from intermeddling with the estate property in any manner or form without prejudice to the applicant's or any other beneficiaries right to take legal action for any previous intermeddling.

Ordered accordingly.

**J. R. KARANJA,**

**JUDGE**

(Delivered and signed this 25th day of February, 2014).