



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
SUCCESSION CAUSE NO. 130 OF 1999

IN THE MATTER OF THE ESTATE OF J O M (DECEASED)

RULING

1. John Okuom Malome died on 28th October 1998. He had been pre-deceased by his wife, Elizabeth Aketch Oguwa, who had died on 5th September 1996. He was survived by minor children H A, L A and F I who were aged 16,13 and 12 years old, respectively, in 1999.
2. Representation to the estate of the deceased was sought on 28th January 1999 by M O M and V A M, his mother and brother, respectively.
3. On 27th May 2008, the children of the deceased, who had by now come of age, moved the court by way of a Summons for Revocation of Grant dated 19th May 2008, asking that the grant made to their grandmother and uncle be revoked for the latter had failed to apply for confirmation of grant, to proceed diligently with administration and to produce before court an account of their administration of the estate.
4. The said application was compromised by consent on 19th January 2009. According to the consent the grant of letters of administration made to V A M and M O M issued on 30th March 1999 was revoked, and a fresh grant was to issue upon the children of the deceased, that is to say H A O, L A O and F I O. A grant of even date was accordingly issued to the said children.
5. On 20th April 2012 the new administrators filed an application for confirmation of grant. They identified the survivors of the deceased as H A O, L A O and F I M. The grant was confirmed on 9th May 2012. A certificate of confirmation of grant was issued on 9th May 2012. The estate was shared out between all the three children. They are gratuitously gave V A M ½ share of Kadero/Got Nyabondo/407.
6. The said V A M has now moved the court by an application dated 11th February 2013. He seeks revocation of the grant arguing that the same was obtained fraudulently. He claims some assets such as Plot No. 209/13435 had debts attached to them. He argues that his interests in the said property was not taken care of and that the grant was confirmed without his being consulted.
7. The application dated 11th February 2013 was responded to by one of the administrators, F I M, who swore an affidavit on 17th April 2013. He says that the applicant was neither a beneficiary of the estate nor a dependent of the deceased, emphasising that the only beneficiaries of the estate were the children of the deceased. He states that the matter is in fact *res judicata*. He accuses the applicant of being ungrateful, for although he was not entitled to anything in the estate they bend backwards to grant him a licence to operate a kiosk on LR No. 209/13435 and to get a share in

8. It was directed on 10th April 2013 that the application dated 11th February 2013 be disposed of by way of written submissions. Both sides have filed their respective submissions. The applicant's submissions were filed on 3rd May 2013, while those by respondent were filed on 9th May 2013.
9. The application is founded on *Section 76* of the Law of Succession Act. A grant will be revoked if the proceedings to obtain it were defective in substance or it was obtained fraudulently by the making of a false statement or concealment of material facts, or was obtained by means of an untrue allegation of fact. It will also be revoked for failure to apply for confirmation of the grant within one year, or to proceed diligently with administration of the estate, or to give an account when required.
10. From the face of the application and the affidavit in support, the applicant is not complaining about the process which led up to the grant being made to the administrators. Neither is he complaining about confirmation of the grant not having been sought within a year, nor does he complain of lack of diligence in administration, nor failure to render accounts. It cannot therefore be said that the application dated 11th February 2013 has been properly brought under *Section 76* of the Act. There is clearly no basis for revoking the grant.
11. The applicant is basically aggrieved about the confirmation process. He says he was not consulted and his interests were not taken into account.
12. Confirmation of a grant is all about distribution of an estate. The deceased died intestate. Distribution to his estate is governed by Part V of the Act. The deceased was survived by children but no spouse. In such case the estate is divided in accordance with *Section 38* of the Law of Succession Act, which provides that the estate is divided equally between the children.
13. The applicant is a brother of the deceased. Siblings of a deceased person are entitled to a share in the estate of their dead brother or sister by virtue of *Section 39* of the Act. They would be entitled only where there is no surviving spouse or children. For avoidance of doubt, the said provision states –

“39(1). Where an intestate has left no Surviving spouse or children, the net intestate estate shall devolve upon the kindred of the estate in the following order of priority-

 - a. ***Father, or if dead***
 - b. ***Mother, or if dead***
 - c. ***Brothers and sisters, and any child or children of deceased brothers and sisters, in equal shares...***
14. Going by the above provision, the applicant herein was not entitled to a share in the estate of the deceased as the deceased had been survived by children. The provision which governs distribution of the estate is *Section 38* of the Act, and not *Section 39* of the Act. Consequently, the applicant has no stake whatsoever in the estate of the deceased. There was therefore no need for him to be consulted by the administrators at the point they applied for confirmation of the grant.
15. I have carefully perused the record and noted that the point had already been ruled upon by Ang'awa J. on 11th November 1999, when it was held that the property the subject of the estate should devolve to the children of the deceased equally, and that the brother and mother of the deceased could not inherit any part of the estate.
16. The application dated 11th February 2013 is wholly without foundation. It is available for dismissal, and I hereby dismiss it with costs to the administrators.

DATED, SIGNED and DELIVERED at NAIROBI this 23rd DAY OF May 2014.

W. MUSYOKA

JUDGE

In the presence of Mr. Oriaro advocate for the respondent.