



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MURANG'A

SUCCESSION CAUSE NO. 433 OF 2013

(IN THE MATTER OF THE ESTATE OF NJOROGE KIMANI)

MBURU NJOROGE.....APPLICANT

VERSUS

FREDRICK MBURU NJOROGE.....RESPONDENT

JUDGMENT

The applicant filed a chamber summons dated 14th March, 2013 seeking revocation or annulment of grant made to Fredrick Mburu Njoroge by the subordinate court on 14th March, 2013 on the grounds that the proceedings in which the grant was obtained were defective in substance and that the grant was obtained fraudulently by making a false statement and concealment from the court facts material to the cause. The application is said to have been brought under section 73 of the Law of Succession Act; this appears to be an error as it is only section 76 of the Act that caters for nullification or revocation of grant of representation on the basis of the grounds raised in the applicant's application.

In the affidavit sworn by the applicant in support of his chamber summons, he swore that Njoroge Kimani, the deceased whose estate is in issue died on 22nd May, 1984 and the grant of letters of administration of his estate was made to the respondent on 18th April, 2012 and confirmed on 15th February, 2013.

According to the applicant, the only asset in the estate was a land parcel known as **Loc. 8/Kaharo/828** comprising 6 acres; in the applicant's view the value of this land was well beyond Kshs. 100,000/= and therefore the magistrates' court had no jurisdiction to entertain the succession cause or make any grant in respect of that estate.

I must hasten to mention here that this contention was not supported by any evidence; with all the variable attendant factors, a valuation of land is not something that a court can take judicial notice of-it must be proved.

The applicant also contended that the deceased had two wives who incidentally had also died; it is not clear from his affidavit when they died but it is apparent that each one of them was survived by two children. The applicant and one Zipporah Wangui were from the first house and the respondent and Francis Kibe were from the second house. Francis Kibe who happened to have also died was survived by

his wife Hannah Wanjiru. According to the applicant, these people are the proper beneficiaries of the estate of the late Njoroge Kimani.

In the certificate of confirmation of grant, the deceased's estate was shared out between Moses Njuguna who was given 1.25 acres, James Njoroge who got 1.25 acres, the applicant who received 1 acre and the respondent who was given 2.25 acres.

In the applicant's view Moses Njuguna was neither a brother nor a son of the deceased; he was the son of the late Francis Kibe or the in other words the deceased's grandson. Moses Njoroge who apparently does not appear on the certificate of confirmation as having been allocated any share in the distribution of the estate and James Njoroge who as noted was given 1.25 acres were the sons of Francis Kibe and according to the applicant they were not entitled to a share of the deceased's estate.

The applicant contested the distribution of the deceased's estate and argued that each of the deceased's four children ought to have received 1.5 acres each bringing the total to 6.0 acres.

By way of an affidavit sworn by the respondent on 4th November, 2013, the respondent averred that as the son of the deceased he had every right to petition for letters of administration of his estate. The respondent attached to his affidavit a copy of the consent duly signed by the respondent giving his consent for the applicant to petition for letters of administration.

After the letters of administration had been duly issued, so the respondent deposed, they were duly confirmed on 15th February, 2013 without any objection or protest from the applicant who together with the rest of the beneficiaries were present in court on the material day when the grant was confirmed.

It is the respondent's case that if the applicant was dissatisfied with the distribution of the estate, then he ought to have appealed to this court rather than apply for revocation of the grant

Under **section 76** of the **Law of Succession Act**, a grant of representation, regardless of whether or not it has been confirmed, may be revoked or annulled by the court if the proceedings out of which it was obtained were defective in substance; or that the grant was obtained fraudulently by deliberately making a false statement or concealing from the court something material to the succession cause or petition; or that the grant was obtained by means of untrue allegation of fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently. Where the grant has been made but the administrator has, even after due notice and without any reasonable cause, failed to apply for its confirmation or proceeded diligently with the administration of the estate or has failed to produce to court within the prescribed time an inventory or account of administration as required by the provisions of paragraphs (e) and (g) of section 83 of the Act or has produced such an inventory or account but that it is false in some material particular, the grant may also be annulled or revoked. The grant will also be revoked if it has become useless and inoperative due to subsequent or intervening circumstances.

Although the application by the applicant is said to be based on the grounds that the proceedings out of which it was obtained were defective in substance and that the grant itself was obtained fraudulently by making a false statement of fact, the applicant's main dispute appears to be pegged on the sharing out of the deceased's estate. As I understand him, he would not have any serious issue to take with the grant of letters of administration to the respondent if the estate was distributed in the manner he has suggested in his affidavit.

Indeed there is evidence from the petition for letters of administration that the applicant consented to the grant being made to the respondent and even after it had been made, the applicant did not protest to the proposed sharing out of the estate when the application for confirmation of grant came up for hearing on 15th February, 2013. The record from the subordinate court indicate that all the beneficiaries, who I suppose include the applicant herein, were in court on the material date and that none of them objected or protested against the grant being confirmed. In the absence of any such protest or objection, the grant was duly confirmed.

Having actively participated in the proceedings out of which the grant was made and subsequently confirmed, it would be insincere of the applicant to come back to court to seek nullification or revocation of the same grant simply because he is not satisfied with the manner in which the deceased's estate was shared out amongst the survivors or the beneficiaries of the deceased. In any event, a disagreement or dissatisfaction with the distribution of the estate of a deceased person is not among the grounds upon which a grant may be revoked or nullified; irrespective of how genuine such a disagreement or dispute may be, it cannot be resolved in the context of a summons filed under **section 76** of the Law of Succession Act.

In these premises, the applicant's application dated 14th March, 2013 does not appeal to me to be well founded in law; it is not only misconceived but it is also without merit. It is accordingly dismissed; parties will bear their own costs. It is so ordered.

Dated, signed and delivered in open court this day of 23rd May, 2014

Ngaah Jairus

JUDGE