

to be heard and determined. As if that was not enough, on the 5th March, 2014, Francis Kamau Njiraini and Florence Njeri Chege, filed another application dated 4th March, 2014 for revocation of the grant or in the alternative for them to be included as co-administrators subject to the petitioner furnishing to the court proceeds of a property sold after confirmation of the grant and furnishing a correct account of the business proceeds and rental income.

This latest application dated 4th May, 2014, is the subject of this ruling and following directions given by this court on 20th May, 2014, both the petitioner and the applicants (herein objectors) filed written submissions in respect of the application which is based on three (3) grounds viz:-

1. ***That, the petitioner has failed and without any reasonable cause to proceed diligently with the administration of the estate.***
2. ***That, some of the property comprised in the estate of the deceased have been sold and others could be in the same process.***
3. ***That, the petitioner has refused and/or failed to comply with the directions stipulated in the certificate of confirmation.***

Affidavits in support of the application dated 4th March, 2014, were filed by the objectors and a replying affidavit in opposition to the application dated 3rd June, 2014, was filed by the petitioner.

The application invokes Rule 73 of the Probate & Administration Rules which grants the court inherent powers to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.

It is notable that the parties herein have filed several applications some of which have not even been heard and determined. Such conduct would amount to nothing short of abuse of the court process.

A multiplicity of applications only contributes to delays in finalization of suits and creates unnecessary confusion and overlapping of issues indispute.

Be that as it may, this court has carefully considered this application in the light of the supporting and opposing grounds as well as the submissions by each party and holds the opinion that the basic issue for determination is whether the petitioner has failed without any reasonable cause to proceed diligently with the administration of the estate by selling or intending to sell part of the property comprising the estate of the deceased or by refusing and/or failing to comply with the directions stipulated in the certificate of confirmation.

Section 76 of the Succession Act provides that a grant whether or not confirmed may be revoked or annulled at any time if it was obtained irregularly, fraudulently or by concealment of material facts or even by allegation of facts which are false.

A grant may also be revoked or annulled if the person to whom it was made fails after due notice and without reasonable cause to proceed diligently with the administration of the estate or fails to produce to the court within a prescribed time any such inventory or account of administration as is required under section 83 (e) and (g) of the Law of Succession Act or has produced any such inventory or account which is false in any material particular.

In the supporting affidavits, the objectors herein averred that the petitioner was not given power to sell or dispose of the estate property but by a sale agreement dated 9th December, 2013, she sold three (3) acres of plot No. 264 Suwerwa Settlement Scheme for a sum of Ksh. 1,250,000/= which was deposited into her own bank account. That, contrary to the provisions of the certificate of confirmation, the second objector, Florence Njeri Chege, has never been allowed to manage the eighteen (18) lodging rooms situated on plot No. **LR. 2116/17/2011** and that the income therefrom has never been deposited at the specified bank account. That, the monthly income from the lodge rooms and three rental shops has never

been accounted for neither has the income been utilized in a manner beneficial to the estate.

The petitioner in her replying affidavit denies all the foregoing allegations made against herself and avers that she is an old lady aged over eighty two (82) years who requires constant medical attention. That, she fell sick and was admitted to the Mt. Elgon hospital Kitale where she was referred to a specialist in Eldoret. That, having no other source of income her family agreed that part of plot No. 264 Suwerwa Settlement Scheme be sold to cater for her medical bills, maintenance and related expenses. She therefore entered into sale agreement with third parties which agreement was witnessed by the second objector.

Basically, the sale of part of the estate of the deceased by an administrator without the consent of the dependants and/or beneficiaries would amount to conduct which may be described as reckless and/or fraudulent and be treated as good fodder for revocation of a grant.

Herein, it was alleged that the petitioner sold part of the estate property without the consent of other family members. However, the fact that the second objector was a signatory to the material sale agreement, indicated otherwise and affirms the petitioner's assertion that the family agreed to have part of the estate property sold to cater for her medical and related expenses. No evidence was led to show that the petitioner intends or is in the process of selling the remaining property.

With regard to the petitioner's alleged failure to comply with the directions stipulated in the certificate of confirmation the contention by the petitioner is that the second objector has never been prevented from collecting rent from the premises standing on plot No. L.R. 2116/17/11, neither has she been prevented from managing the said property. Further, the two objectors are aware that she (petitioner) has never collected any income from the lodging rooms and instead, it is the objectors who have been collecting the income while adamantly refusing to cede possession of the premises.

The petitioner contends that the objector's intention is to create confusion in the administration of the estate and have acted dishonestly in so doing.

The foregoing contentions have not herein been substantially disputed by the objectors as they have not offered credible evidence to show that the petitioner has acted contrary to the conditions stipulated in the certificate of confirmation. What has clearly come out is the fact that the administration of the estate after the confirmation of the grant has become a challenge to the petitioner not on her own making but due to the apparent intermeddling by her daughters-in-law including the second objector and one Esther Waithera Karu. It may be noted that, there is a pending application by the petitioner against the first objector who is son to the said Esther Waithera Karu. There is also a pending application by the first objector, his brother and mother for the revocation of the grant.

The two pending applications clearly indicate that the administration of the estate by the petitioner has been made difficult by her daughters-in-law and nephews who appear to have overwhelmed her on account of her ill-health and age. It was foolhardy for the second objector to claim that she became a witness to the aforementioned sale agreement in order to obtain evidence of the sale of part of the estate property by the petitioner. Her participation in the sale transaction betrayed her honesty in the entire administration of the estate. It is apparent that the petitioner's daughter-in-law Esther Waithera Karu and her children have taken control of the lodging premises contrary to the requirements prescribed in the certificate of confirmation. Consequently, the petitioner cannot be expected to account for the income derived from the premises unless they are in her possession which does not appear to be the case. In any event, there was nothing to show that prior notice was given to the petitioner to proceed diligently with the administration of the estate by proper management and production of any inventory and/or account of administration that may be demanded.

It cannot therefore be said that the petitioner has indeed without reasonable cause failed to diligently administer the estate after confirmation of the grant. On the contrary, the petitioner has encountered obstacles and difficulties in the administration of the estate mostly occasioned by her daughters-in-law and their children.

In the circumstances, it is not difficult for this court to figure out that the administration of the estate and in particular the premises on plot No. L.R. 2116/17/11 is in a mess created by the petitioner's daughter-in-law Esther Waithera Karu and by extension, the first objector. This has the effect of obstructing the smooth and peaceful administration of the estate by the petitioner. In order to undo the mess and enable proper and effective administration of the estate, this court must in terms of Rule 73 of the Probate & administration Rules decline to revoke the grant issued on the 26th October, 2010 and order that the eldest surviving son of the deceased, Francis Kamau Njiraini be included as a second administrator of the estate and that the grant be amended accordingly.

The petitioner is a sickly old lady who needs to be assisted in the administration of the estate and hence the inclusion of a second administrator.

It is further ordered that the certificate of confirmation of grant issued on 31st July, 2013 be revoked so that the affected parties may go back to the drawing board and carry out afresh distribution of the estate to accommodate each and every dependant and/or beneficiary.

The revoked certificate of confirmation of grant be surrendered to the court forthwith and a fresh certificate be applied for by the two administrators after satisfactory re-distribution of the estate has been effected and in any event, within a period of six (6) months from this date hereof.

The parties to this application shall bear own costs.

Ordered accordingly.

[Read and signed this 19th day of June, 2014.]

J.R. KARANJA.

JUDGE.