



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
SUCCESSION CAUSE NO. H.C. 617 OF 1993

IN THE MATTER OF THE ESTATE OF CHARLES MUGA MWANGI (DECEASED)

RULING

1. The application before court for determination is a Summons for Revocation of Grant dated 2nd September, 2013 and taken out under Section 76 of the Law of Succession Act. The applicants seek the orders on the face of the application, the principal one being for the revocation of the grant. It is argued that the administrators have not moved for confirmation of the grant despite expiry of ten years. There are also claims that some assets have been fraudulently transferred.
2. The person named as respondent and co-administrator of the estate swore a replying affidavit in opposition to the application, on 24th March, 2014. In his affidavit, he avers among others that he was not aware of the proceedings in this cause until he was sent with the application, neither was he aware that a grant of letters of administration intestate was issued in his name as a co-administrator. He further states that he is only aware that Jane Njeri Mwangi and Esther Mwendu Mwangi petitioned the court for a grant of letters of administration intestate in the year 1990 in **Succession Cause No. 147 of 1990** where grant has not been issued to-date. It is argued further that the applicant abused the court process by initiating fresh probate proceedings yet they were aware that probate proceedings had already been initiated earlier and filed in this court as **Succession Cause No. 147 of 1990**. He contends that the grant should not be revoked but annulled as the proceedings to obtain the said grant were fatally defective in substance.
3. The application was disposed of by way of written submissions. The applicants in their submissions contend that the said grant be revoked and the same be issued to them. They also seek the revocation and transfer of properties and shares by the respondent on the basis of the grant sought to be revoked.
4. The respondent on his part submits that the grant issued in this cause was obtained by fraud and the proceedings to obtain the same were fatally defective as there was still pending a similar succession cause No. 147 of 1990. It is further his submission that a grant of letters of administration intestate was issued to him as a co-administrator yet he never appended his signature in the petition for letters of administration intestate and neither was he aware that proceedings to obtain grant has been instituted. He contends that the petitioners have come to court with unclean hands since they failed to inform the court that there was pending another succession cause before the court on the same estate.

5. The grounds upon which a grant may be revoked are statutory. They are provided for in Section 76 of the Law of Succession Act which provides thus:

‘A grant of representation whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by interested party or its own motion:-

- a. *That the proceedings to obtain the grant were defective in substance;*
- b. *That the grant was obtained by the making of a false statement or by concealment of from the court of something material to the case;*
- c. *That the grant was made by an untrue allegation of fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently.*
- d. *The person to whom the grant was made has failed, after due notice and without reasonable cause, either:-*

(i) To apply for confirmation of the grant within a year from the date thereof or such longer period as the court has ordered or allowed; or

(ii) To proceed diligently with the administration of the estate; or

(iii) To produce to the court, within the time prescribed, any such inventory or account of administration as is required by the provisions of paragraph (e) and (g) of section 83 or has produced such inventory or account which is false in any material particular; or

- e. *That the grant has become useless and inoperative through subsequent circumstances.’*

6. In the instant case the said grant was allegedly issued to George Muga Mwangi and Joseph Mwangi who are some of the beneficiaries of the deceased estate by virtue of their being sons to the deceased. However, the respondent George Muga has refuted claims that he was one of the administrators as he did not petition for the grant of letters of administration intestate of the estate of the deceased. Indeed, he avers in his replying affidavit at paragraph 8 that he was only aware that Jane Njeri Mwangi and Esther Mwendu Mwangi petitioned the court for a grant of letters of administration intestate in Succession Cause No. 147 of 1990 and grant has not been issued to date. His co-administrator, Joseph Mwangi, has confirmed that they were issued with letters of administration intestate on 30th September, 1993 and that he has on several occasions requested his said co-administrator that they confirm the said letters of administration but he has not been willing to do so.
7. It must be observed that this court cannot compel a person who is not willing to be an administrator of the deceased estate to be one. The respondent has flatly rejected that he petitioned for the said grant of letters of administration and alleges that his signature was fraudulently obtained. Unfortunately, the applicants have not responded to that allegation in both their further affidavit and submissions. Certainly, the applicants have also not responded to the Respondent’s allegation as the existence of the petition in **Succession Cause No. 147 of 1990** for grant of letters of administration intestate by the deceased’s widows, namely: Jane Njeri Mwangi and Esther Mwendu Mwangi. The existence of the said cause has carefully been avoided by the applicants.
8. A perusal of the records before this court reveals that the two widows were not even listed as beneficiaries in the said petition for letters of administration intestate and no reason has been proffered for their exclusion.
9. It is not in dispute that the deceased died intestate. The law gives this court final discretion as to who should be granted letters of administration intestate, giving preference to persons who should administer the estate in cases where the deceased died intestate as in this instant case. Section 66 of the Law of Succession Act provides thus:

“When a deceased has died intestate, the court shall, save as otherwise expressly provided, have a final discretion as to the person or persons to whom a grant of letters of administration shall, in the best interests of all concerned, be made, but shall, without prejudice to that discretion, accept as a general guide the following order of preference-

- a. *surviving spouse or spouses, with or without association of other beneficiaries;*
- b. *other beneficiaries entitled on intestacy, with priority according to their respective beneficial interests as provided by Part V;*
- c. *the Public Trustee; and*
- d. *(d) creditors;*

Provided that, where there is partial intestacy, letters of administration in respect of the intestate estate shall be granted to any executor or executors who prove the will.”

10. The omission to include the said two widows as beneficiary renders this court to conclude that the grant was obtained by the making of a false statement or by concealment of from the court of something material to the case. There was no mention of the alleged six daughters of the deceased as beneficiaries by the applicants. Coupled with the fact that the applicants have not made any mention of the existence of Succession Cause No. 147 of 1990 filed by the two widows of the deceased. The court would normally exercise its discretion by giving preference to the surviving spouse(s) of the deceased. The applicants have not been candid with the court and a court of justice frowns upon such conduct. Clearly the applicants have failed to demonstrate good faith on their part.

The application before me is clearly an abuse of the court process. In view of the fact that the above mentioned Succession Cause No. 147 of 1990 was still pending, this court holds that the proceedings to obtain the grant were defective.

11. The result then is that the application lacks merit and is accordingly dismissed. For the above reasons, the grant issued on 30th September, 1993 is hereby annulled. Parties are urged to take urgent steps to bring the administration of the estate of the deceased to a conclusion by having **Succession Cause No. 147 of 1990** finalised.

DATED, SIGNED and DELIVERED at NAIROBI this 11th DAY OF December 2014.

W. MUSYOKA

JUDGE

No appearance of the advocate for the applicant.

In the presence of Miss Otieno advocate for the respondent.