



REPUBLIC OF KENYA

**IN THE HIGH COURT AT NAKURU**

**SUCCESSION CAUSE NO.583 OF 2006**

**IN THE MATTER OF THE ESTATE OF JOHN MWAURA KIBUI (DECEASED)**

**RULING**

There are two applications before me. One by one of the administratrix of the estate of the late John Mwaura Kibui and another by the two beneficiaries of the estates, who are the daughters of the late John Mwaura Kibui (the deceased).

From the written submission by both sides, it is apparent that the two applications were canvassed together. When the deceased died on 20<sup>th</sup> February, 2003, the applicants were aged 6 and 7 years, respectively. Their mother had predeceased the deceased. Because they were minors, the grant in respect of the deceased's estate was issued to the mother and sister of the deceased and upon confirmation of the grant, the deceased person's only asset, NJORO/NJORO BLOCK 5/35 measuring approximately 2 acres was to be held in trust by the two administratrix for the applicants.

The applicants have attained the age of majority and have brought the first application for the distribution to them of the estate and the termination of the administratrix's trust. Stung by that application, the 1<sup>st</sup> administratrix has also brought an application for the cancellation, setting aside and/or revocation of the grant on the ground that:

- (i) the grant was obtained erroneously;
- (ii) the grant was obtained prematurely before the settlement of a liability, a bill of Kshs.835,024 at the M.P. Shah Hospital;
- (iii) the 1<sup>st</sup> administratrix failed to include herself as an heir to the estate as the only property in question was acquired by her but registered in the name of the deceased.

A trustee appointed to hold a property for the benefit of a minor beneficiary ceases to be a trustee when the minor attains the age of majority. It follows that the trustee ought to facilitate the distribution of the estate to the beneficiaries as soon as they are adults. So that the applicants in this cause would have had to apply to court for distribution of the estate.

Turning to the application by the 1<sup>st</sup> administratrix, the same is as perplexing as it is strange for an administratrix of an estate to apply for revocation of the grant issued to her. None of the grounds advanced for that strange course of action is available or recognized as a basis of revocation under **Section 76** of the **Law Succession Act**.

The 1<sup>st</sup> administratrix cannot, after six years after petitioning for the grant, suddenly realize that she was entitled to the estate; that after all the property in question did not belong to the deceased but to her and that there are liabilities owing to MP Shah Hospital. The liability was not disclosed when the petition was filed. The liability is doubtful and is an afterthought for that reason. The letter purportedly issued from MP Shah is equally suspect. It does not amount to a demand notice and appears to have been written for the sole purpose of supporting the 1<sup>st</sup> administratrix application. The letter is dated 6<sup>th</sup> April, 2011 and the application was brought 26<sup>th</sup> April, 2011.

The 1<sup>st</sup> administratrix has only been candid in one respect. She was disappointed and angered by the

manner the family of the deceased person's wife took away everything that belonged to her late son, the deceased, including the two applicants, who do not live with her. Her fear is obvious that she will have no control of what the applicants will do with the property. The property was registered in the name of the deceased and the applicants are the heirs. It is theirs as the 1<sup>st</sup> administratrix cannot show any proprietary or equitable interest in it.

I allow the application dated 16<sup>th</sup> March, 2011 with costs and dismiss that dated 21<sup>st</sup> April, 2011 with no orders as to costs.

**Dated, Signed and Delivered at Nakuru this 24<sup>th</sup> day of February, 2012.**

**W. OUKO  
JUDGE**