



REPUBLIC OF KENYA

IN THE HIGH COURT

AT NAIROBI

MILIMANI LAW COURTS

Succession Cause 1027 of 2004

IN THE MATTER OF THE ESTATE OF ANDREW MUCHUNU KAMAU (DECEASED)

NATHAN KAMAU ANDREW APPLICANT

VERSUS

1. MARY NJERI MUCHUNU

2. LOISE MUTHONI MUCHUNU.....

RESPONDENT/PETITIONERS

RULING

This application is brought by a summons for revocation of a grant dated 29th April, 2009, and taken out under **Section 76 of the Law of Succession Act and under Rules 17 (1) and 67 of the Probate and Administration Rules**, and all other enabling provisions of the law. The Applicant seeks from the Court orders that –

- (a) The grant of letters of administration intestate issued to Mary Njeri Muchunu and Loise Muthoni Muchunu on 15.7.2008 in this cause be revoked or annulled on the ground that the proceedings to obtain the grant were defective in substance and/or was also obtained fraudulently by the making of a false statement or by the concealment from the Court of something material to the case in that the Petitioner did not cause or ensure that notice of application for grant was published in the Gazette.***
- (b) The time within which the Applicant may file his answer to petition and his objection be enlarged.***
- (c) The costs of this application be paid by the Petitioners to the Applicant.***
- (d) Such further or other reliefs be granted to the Applicant as are just and expedient.***

The application is supported by the annexed affidavit of the Applicant sworn on 29th April,

2009. Simultaneously with this application, the Applicant also filed an affidavit of protest against Confirmation of the Grant. In the affidavit the Applicant alleges that the manner in which the Petitioners were appointed administrators of the estate was irregular in that the proceedings to obtain the grant were fundamentally defective in a way that makes the grant a nullity or void in that notice of the application for grant was not published as required by law. He further deposes that Mary Njeri Muchunu was not in the contemplation of the deceased as a beneficiary on the ground that she was still married to her husband, Elizaphan Kanyingi Kamau, and all her children namely, Kamau, Wanjiru, Muchunu, Mwangi and Wangari were leaving with her husband. Furthermore, the dowry in respect of her marriage had never been returned to her husband. For these reasons, he contends that Mary Njeri Muchunu should not have been appointed an administrator of the estate of the deceased.

After considering the pleadings and the written submissions of Counsel, I note that there are two main points to be considered in this matter. These are whether the Petitioners were guilty of failing to disclose who all the beneficiaries were and, secondly, whether it is true that the notice of application for grant was not published in the Kenya Gazette. It is on record that the Objector and the Petitioners are brother and sisters. It is also true that the Petitioners did not disclose that they had some other siblings apart from the Objector herein. Even in their application by summons for Confirmation of Grant, they argued that the estate of the deceased should be distributed to the two Petitioners and the Objector exclusively. This left out Hannah Wanjiku, Ruth Wambui and Rahab Wangui who were sisters to the Petitioners and the Objector but were married. They also left out Esther Nduta who was their married sister but was deceased.

On the face of the record, the only reason for leaving out these siblings was that they were married. In view of the fact that even Mary Njeri Muchunu, one of the two administrators was married, this contradicts the equation. It is erroneous to exclude a beneficiary from inheriting the property of a deceased relative on the ground that the beneficiary is a married woman. The **Law of Succession Act** does discriminate between married and unmarried beneficiaries. They are all equal in the eyes of the law. Failure to disclose the existence of those other beneficiaries was therefore wrongful and that is a good ground for revoking the grant made in this matter.

I note from Counsels' submissions that an argument was advanced by the Objector to the effect that the reason why the two siblings were left out was that when they were approached about filing the Succession Cause, they said they were not interested in the estate of the deceased who died on 15th April, 1978 which was three years before the coming into force the **Law of Succession Act**. Against this argument, it is on record that this matter was first filed in Court in 1983. That was after the **Law of Succession** had come into force and its dictates should have been obeyed. When the present matter was filed in 2004, the said **Act** had deeply taken root and its provisions should have been honoured in observance and not in breach. I therefore find that it was incumbent upon the Petitioners to disclose the existence of all their siblings as required under that **Act**.

Finally, it was suggested that the notice of application for grant was not published in the Kenya Gazette as required by law. That was not correct. All the parties, including the Applicant, are now aware that by Gazette Notice No.4767 in the issue of The Kenya Gazette Vol. CX – No.45 dated 6th June, 2008, notice was given that the two administrators herein to whom the grant was made had applied for the grant of Letters of Administration intestate to the estate of the deceased herein. As all the parties are now alive to that fact, I need say no more on that issue. Suffice it to emphasize that notice of the application for grant was duly published in the Kenya Gazette as required by law.

Seeing that the Petitioners withheld some relevant information about the existence of some other siblings, I find that that was incompatible with the requirements of the law, and for that reason only the grant made in this matter is hereby set aside. Since everyone is presumed to know the contents of the Kenya Gazette, the Objector cannot be heard to say that he was not aware that the Petitioners had filed their petition in Court. He was duty bound to object to the Letters of Administration within 30 days but he did not do so. In the circumstances, it will be in the interests of all the parties and their siblings to join hands in this matter and commence afresh from where they lost the way.

Costs shall be in the cause.

Orders accordingly.

DATED and **DELIVERED** at **NAIROBI** this 27th day of March, 2012.

L. NJAGI
JUDGE