



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NYERI
SUCCESSION CAUSE NO.685 OF 2008
IN THE MATTER FO THE ESTATE OF
STEPHEN WAHOME GIKONYO – DECEASED

SAMUEL GIKONYO WAHOME.....APPLICANT

versus

JANE NGIMA WAHOME.....RESPONDENT

R U L I N G

Samuel Gikonyo Wahome, the applicant herein, took out the Summons for Revocation/Annulment of Grant dated 23rd July 2010, in which he applied for the grant issued to **Jane Ngima Wahome** and confirmed on 9th July, 2010 to be revoked and or annulled. The summons is supported by the affidavit of the Applicant. Jane Ngima Wahome, hereinafter referred to as the Respondent opposed the summons by filing a replying affidavit. When the summons came up for hearing, learned counsel appearing in the Cause recorded a Consent Order to have the dispute disposed of by affidavit evidence and written submissions.

I have considered the material placed before this court plus the written submissions. In seeking to have the grant revoked and or annulled, the Applicant has put forward the following grounds:

- i. The proceedings to obtain the grant were defective in substance.*
- ii. grant was fraudulently obtained by the making of a false statement or by the concealment from the Court of something material to the cause.*
- iii. That the grant was obtained by means of an untrue allegation of a fact essential in a point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently.*

It is the submission of the Applicant that the Respondent had failed to reveal to Court that the deceased was survived by other dependants and that she failed to seek for their consent to support the proposed distribution of the estate. She is said to have failed to serve them with the summons for confirmation of grant. The Applicant named the following as children of the deceased who were excluded from the list of those who should share the deceased's estate:

- *Ambrose Mwangi Wahome.*
- *Moses Maina Wahome.*

- ***Simon Mwaniki Wahome.***
- ***Agnes Wangui Ndumia.***
- ***Mary Nyambura Muriithi.***

The Respondent on the other hand denied the allegations. She pointed out that the Applicant and his siblings, being her step-children were present in Court when the grant came up for confirmation. It is averred that they were given their share of the estate by the deceased *intervivos*. The Respondent further argued that she sought the consent of her co-wife in taking out the Letters of Administration, hence there was no need to seek for a further consent from her children who rank below her in priority to apply for Letters of Administration. I have taken into account the rival submissions over this ground. Basically, the Applicant has alleged that the grant was issued on 13th April, 2010 and hurriedly confirmed on 9th July 2010, before the lapse of six (6) months. The Applicant avers that the Respondent had something to hide by hurrying up the process. I have looked at the record and it is apparent that the Respondent applied for the grant to be confirmed notwithstanding that six (6) months had not lapsed as required under **Section 71(3) of the Law of Succession Act**. There is no evidence to show that the Respondent had something to hide in applying for the grant to be confirmed before the lapse of six (6) months. The Respondent was candid to the Court, in that she wanted the grant to be confirmed urgently because her co-wife who was her co-administratrix of the Estate of Stephen Wahome Gikonyo, deceased was elderly and sick. There is also an allegation that the Respondent did not seek and obtain the consent of the Applicant and his siblings. It is clear from the record that the Respondent's co-wife had given her consent to the Respondent to take up Letters of Administration. It is also the Applicant's contention that the Respondent did not give the Applicant and his siblings a share of the deceased's estate yet they were children of the deceased. The Respondent answered this allegation by clearly stating that the Applicant and his siblings were entitled to share what was given to them through their mother. The record shows that the deceased was married to two wives namely: Jane Ngima Wahome and Reverata Wambaire Wahome. The estate of the deceased was comprised of the following assets:

- i. ***L.R. Thegenge/Kianjogu/968.***
- ii. ***L.R. Githamba/Muhotetu/Block 2/991.***
- iii. ***Plot No.5, Kaguathi.***

The certificate of confirmed grant shows that the aforesaid assets were shared as follows:

- i. ***L.R. Thegenge/Kianjogu/968.***
 - ***Jane Wahome***
- ii. ***L.R. Githamba/Muhotetu/Block 2/991.***
 - ***Jane Wahome – 5 acres.***
 - ***Mary Wahome – 3 acres.***
 - ***Reverata Wahome – remainder***
= (3 acres).
- iii. ***Plot No.5, Kaguathi - To be shared***

equally between Jane Wahome and

Reverata Wahome.

It is alleged that the distribution was oppressive to some of the beneficiaries. The cardinal issue raised by the Applicant is that they were not involved in the sharing of the estate and that the distribution was oppressive. The Respondent does not deny the fact that she may not have involved the Applicants and his siblings save for one in the distribution of the estate. I must state that when it comes to sharing out of the estate, it is important to encompass most of the beneficiaries. It would appear the Respondent only brought on board her co-wife and one of her daughters. The first widow namely: Reverata Wambaire Wahome, has seven children while the Respondent had no children. The law under **Section 40** of the **Law of Succession Act**, is quite explicit in the manner of sharing such an estate. It is obvious that the Respondent did not comply with the provisions of aforesaid section when she purported to share out the estate during the confirmation of the grant. I am convinced the Applicant's application has merit for the reason that the distribution was oppressive and that the same was done without the consent and participation of most of the beneficiaries of the deceased's estate. The summons for revocation/annulment of grant is allowed as prayed. In order for the Cause not to procrastinate further, I direct that a fresh grant be issued in the joint names of Jane Ngima Wahome and Stephen Wahome Gikonyo. The duo may jointly or separately apply for the grant to be confirmed notwithstanding that six (6) months will not have lapsed from the date of this ruling. Since the dispute involves members of the same family, I direct that each meets his or her own costs.

Dated and delivered this 27th day of April 2012.

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J. K. SERGON

JUDGE

In open court in the presence of Mr. Wachira for the Applicant and Mr. Waweru Macharia holding brief karweru for Petitioner.