



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI (MILIMANI LAW COURTS)

Succession Cause 2764 of 2011

IN THE MATTER OF THE ESTATE OF NJENGA GATHII-DECEASED

RULING

1. This ruling is delivered in the summons for revocation of grant dated 13th December 2012, brought under **Section 76 (a)(b)(d)(i) and (ii) of the Law of Succession Act (Cap 160 of the Laws of Kenya)**. The applicant prays that the grant issued to the three respondents by the Kiambu Resident Magistrate Court in Succession Cause No: 128 of 2010 be revoked on the grounds that:

(i) The proceedings to obtain the grant were defective in substance.

(ii) The grant was obtained fraudulently by the making of a false statement.

(iii) The persons (respondents) to whom the grant was made have failed after due notice and without reasonable cause to apply for confirmation of grant and have failed to proceed diligently with the administration of the estate.

(iv) The Kiambu Resident Magistrates' Court has no jurisdiction to hear the succession cause under Section 48 of the Law of Succession Act.

2. The application is supported by the affidavit of Mary Wanjiru Njenga the applicant who is unmarried daughter of the deceased intestate, Joseph Njenga Gathii, who died on 15th September 2000, as confirmed by the death certificate annexed to the said affidavit as Annexure "A".

3. The grant was issued on 30th August 2010 pursuant to a petition filed in that court sometime in January 2010 (Form P&A 80 does not bear the court stamp but its dated 28th January 2010). Form P&A 5 filed in support of the application is shown to have indicated that the value of the estate was Kshs. 100,000/=. Subsequent to obtaining the grant but before confirming the same, the administrators (respondents) embarked on selling certain of the estate properties including:

i) 0.93 acres of L.R. No: 4886/8 at an agreed purchase price of Kshs.9.5 Million of which Kshs. 600,000 was received by the respondents and shared out. The particulars of the transaction are contained in the copy of an agreement for sale dated 14th October 2010 between the administrators and Kirunje Investments Limited, exhibited as annexure "D" of the supporting affidavit.

ii) Shares of the deceased in Limuru Daily sole at Kshs.2.4 million

4. The summons for revocation was served upon the respondents but nothing has been filed in response

thereto. Counsel for the respondents attended court on 13th June 2012 and intimated that he had no desire to file a replying affidavit.

5. A presumption is made, therefore, the facts constituting the grounds supporting the summons are not disputed. The annexures cited above are clear proof of grounds 1 & 2 of the summons and are demonstrative of the fact that the administrators have failed in their undertaking to faithfully administer the estate according to the law and for the interests of the beneficiaries for whom they are trustees of the estate property.

6. The jurisdiction of the magistrate's court under **Section 48 of the Law of Succession Act** is limited to the administration of estates whose value does not exceed 100,000/=. Except by special appointment by the Chief Justice, to represent a high court in certain cases under **Section 47**, a Resident Magistrate has no jurisdiction to deal with any succession cause the value of which exceeds the statutory limit. There is no evidence that the Resident Magistrate in the matter in question had any such powers. Even so the facts before me clearly show that the grant was obtained by misrepresentation of the fact that the estate was valued at Kshs.100,000/=.

7. The actions by the administrators are not only prejudicial to other beneficiaries but are also illegal. I am satisfied that the application has merit and ought to be allowed. Accordingly the grant issued by the Kiambu Resident Magistrate's court on 30th August 2010 is hereby revoked. The applicants shall have costs of the application.

8. In the interest of justice, I order that the respondents be restrained from any further dealings with the estate property pending further orders of the court.

9. Orders accordingly.

DATED, SIGNED and DELIVERED at NAIROBI this 27th DAY OF JULY, 2012.

M.G. MUGO

JUDGE

In the presence of :

for the applicant.

for the respondent.