



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT EMBU

Succession Cause 224 of 2011

IN THE MATTER OF THE ESTATE OF MBUGWA KAREKI ...DECEASED

BETWEEN

FRANCIS MBUGU KANGURUPETITIONER/RESPONDENT

VERSUS

REGINA WANJIRU MBUGWA..... APPLICANT

R U L I N G

This is the application by way of Chamber Summons brought under rule 44 & 73 P&A Rules and Section 76 Laws of Succession Act for an order annulling or revoking the Letters of Administration dated 6/7/2011 by this Court for the reason that the proceedings to obtain the same were defective in substance and the Grant was obtained fraudulently by making false statements and concealment from the Court of something material to the case.

The grounds are that the application was by a stranger to the deceased's family and no citations were issued. That the Applicant was not aware of the said proceedings.

The application is supported by the Applicant's affidavit. She protests in having been made an administrator of her husband's estate without her consent being sought.

The Respondent filed a replying affidavit explaining the circumstances under which he filed an application for limited grant ad litem.

Both Counsels filed their written submissions supporting and opposing the application. I have studied them together with the affidavits. The undisputed facts are as follows;

a) The deceased filed a civil suit Embu High Court Civil Case No.39/03 against the Respondent and another. Judgment was pronounced on 30/1/2007.

b) The Respondent appealed against it vide Nyeri Civil Appeal No. 69/07.

- c) *The deceased died on 2/11/2010 before the appeal was heard.*
- d) *The Applicant Regina Wanjiru Mbugwa is the wife of the deceased.*
- e) *The Applicant has also filed a suit Kerugoya SPMCC No. 360/2010 against the Respondent over the same matter.*
- f) *The Applicant is and has been aware of the pending Court of Appeal No.69/07 Nyeri. She has not taken any step to defend the appeal.*
- g) *Non-prosecution of the Appeal due to death of one of the parties would lead to abatement one year after the death.*

Though this suit was registered as a Succession Cause it ought to have been filed as a Misc. Succession Application. All that the Respondent had told the Court was that the deceased was dead and he was a Respondent in Court of Appeal No.69/07. He further proposed the nomination of the Applicant as his representative in the Civil Appeal No.69/07 Nyeri, since she was the wife. The chief also confirmed that the Applicant was the deceased's wife.

These are the facts which are also admitted by the Applicant. No full grant Temporary or Confirmed was imposed on the Applicant. She has not been made the Administrator of the deceased's estate by any order.

She could only have been cited if the Applicant was entitled to a share in the deceased's estate. The Respondent's interest was in the prosecution and finalization of the Appeal. Therefore the only relevant provision is the 5th schedule rule 14 which provides;

“When it is necessary that the representative of a deceased person be made a party to a pending suit, and the executor or person entitled to Administration is unable or unwilling to act, Letters of Administration may be granted to the nominee of a party in the suit limited for the purpose of representing the deceased therein, or in any other cause or suit which may be commenced in the same or in any other Court between the parties or any other parties, touching the matters or issues in the cause or suit and until a final decree shall be made therein and carried into complete completion”.

The Respondent explained in his affidavit before the Honourable Justice Muchelule why he wanted the Limited Grant ad Litem issued to the Applicant herein. She had filed an application before the lower Court which was dismissed for want of Locus Standi. She was well aware of the pending Appeal. She did not do anything to regularize her position. The Respondent would lose if the Appeal abated as a result of the deceased's death. The Honourable Judge considered all this and issued a Limited Grant ad Litem on 6/7/2011 and the order states;

“Grant issued limited to defending Civil Appeal No.69/07 at NYERI”.

The Grant was for no other purpose save for the above. The Applicant has failed to demonstrate that the Grant ad Litem was irregularly issued. There is nothing material that was concealed from the Court which the Applicant has revealed. If the Applicant was dissatisfied with the Orders of 6th July 2011 the best she could have done was to appeal against it. I therefore find no merit in the application which I dismiss with costs.

DATED AND DELIVERED AT EMBU THIS 11TH DAY OF OCTOBER 2012.

**H.I. ONG'UDI
J U D G E**

In the presence of;

Mr. Rorige for Respondent

Mr. Kahiga for Thungu for Applicant

Njue – C/c