



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KISUMU
SUCCESSION CAUSE NO.393 OF 2006

IN THE MATTER OF THE ESTATE OF: JOSEPH OGINGA OLUOCH – DECEASED

IN THE MATTER OF AN APPLICATION BY:

(1) CRICENSIA VERONICA ATIENO

(2) CHRISTOPHER OCHIENG

AND

IN THE MATTER OF AN OBJECTION BY: MARGARET OLUOCH

R U L I N G

The applicant Margaret Oluoch is the mother of the deceased Joseph Oginga Oluoch, she seeks to have the grant issued to the widow of her son Cricensia Veronica Atieno revoked. The applicant moved the court through summons to revoke grant under Section 83(e), 76(b) & d of the Law of Succession Act and Rule 44(1) of the Probate and Administration Rules. She sought for the following order:

1. That the Respondent do produce to the court a full and accurate inventory of the deceased estate;
2. That the grant of letters of Administration to Cricensia Veronica Atieno and Christopher Ochieng made on 17th May, 2010 be revoked.
3. That the costs of the application be provided for.

The application was based on the grounds that, the proceedings to obtain the grant were defective in substance;

the grant was fraudulently obtained by concealment of material information; one of the administrators is a stranger and the respondent has failed to file an inventory and to confirm the grant as required by law.

The respondent/petitioner objected to the application by filing a replying affidavit dated 11th September, 2006. In the replying affidavit she denied that the grant was obtained fraudulently in that she included the deceased's daughter from a previous marriage as a beneficiary; that she purchased the property referred to in the application with her late husband, part payment of gratuity was paid to the applicant. She denied that the applicant contributed to the purchase of the property or its development. She alleged that the applicant collects rent which she uses exclusively on herself. It has been difficult to confirm the estate as the applicant collects part of proceeds, that the co-administrator is the brother to the petitioner. She further denied intentions to sell the property.

From the pleadings it is clear that there is hostility between the parties. Both the deceased's mother who is the objector, and the petitioner who is the wife to the deceased collects the proceeds from the estate. Each feels she is more entitled than the other.

For consideration is whether or not:

(1) to revoke the grant of letters of administration issued to the petitioner?

(2) whether or not to appoint a 2nd administrator?

(3) should the petitioner provide an inventory and account?

The view of this court is that this is not a good case for revocation of grant. From the observation of the court the 2, the objector and petitioner will not be able to administer the estate together due to the hostility between them. There are minors involved, and it is therefore necessary that a second administrator be enjoined

The work of an administrator is to collect and preserve the estate and only use the proceed with leave of the court. The deceased's mother is not an administrator and ought not to collect and use any of the proceeds in the estate as she is doing now. In any event no tangible evidence was placed before court to show that indeed she bought and developed the property with her son. The property was jointly bought by her son and the widow. However it is not lost to court that in an African set up children do take care of their parents and the objector therefore is right to want a share of her son's estate assuming that he did take care of her.

The administrator is under a duty under Section 83 of the Law of Succession Act to protect and preserve the estate including the duty to account and make an inventory.

From the evidence of both parties the applicant has also collected proceeds from the estate. It will therefore be necessary that both do account and give inventory of the assets.

These are close family members and by all means must be encouraged to amicably settle the issue. In this regard both counsel on record are directed to convene a meeting where the parties will:

- 1. (a) agree on a person other than the applicant to join the petitioner as a co-administrator of the estate;
- (b) make a proposal on mode of the distribution of the estate;
- 2. Both parties do propose income for all dependants of the estate pending confirmation and distribution of the estate;
- 3. It is further directed that both parties in the meantime do account and give details of the sum so far collected by each party within the next 30 days;

4. Matter to be adjourned to 12th May 2011.

Dated and Delivered at Kisumu this 18th February 2011

**ALI-ARONI
J U D G E**

In	the	presence	of:
.....Counsel		for	Petitioner
.....Counsel for objector			