



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT EMBU
HC SUCCESSION CAUSE NO. 253 OF 2010

JOHN KAMUTA
KABANGA.....APPLICANT

VERSUS

JANE WAMBUI NGARI1ST
RESPONDENT

GABRIEL MUNGE KABANGA.....2ND
RESPONDENT

SUSAN WAWIRA KABANGA..... 3RD
RESPONDENT

CICILY NJOKI KABANGA4TH
RESPONDENT

ERNEST NDUKU MUCHIRA5TH
RESPONDENT

RULING

The Applicants’ Summons for the Revocation or Annulment of Grant is filed under section 76 (e) of the Law of Succession Act. This section reads as follows;

76 “A grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides either on application by any interested party or on its own motion: _

(e) That the Grant has become useless and inoperative through subsequent circumstances.

In my considered view the “subsequent circumstances” anticipated above do not include the death of the Administrator/administratrix of the estate of a deceased person. The subsection (e) must be read and

interpreted 'ejusdem generis' with the other provisions of section 76 of the Law of Succession Act. In the first place, the Respondent in a Summons for Revocation is supposed to be the holder of the Grant. If the holder of the Grant is deceased, then there cannot be a respondent and this on its own should render a technical knockout to the summons. Where an administrator dies before the Estate is fully distributed, the right cause of action is to apply for substitution of the administrator and not for revocation of the said grant. Death of the Administrator/Administratrix is not one of the grounds for the revocation of a grant. This summons must therefore fail. I would like to mention also that the Grant herein was confirmed way back in 1994 i.e. Approximately 16 years ago. Although the Law of Succession Act does not give a limitation as to when an application for revocation of a Grant can be filed, even assuming that the summons were properly before the court, 16 years is in my view inordinate delay and seeking to put back the clock 16 years cannot be in the interests of justice. This application therefore fails. The same is hereby dismissed with no order as to costs.

W. KARANJA

JUDGE

Signed by the above but delivered and dated at Embu this 31st day of March, 2011 by the undersigned.

M. WARSAME

JUDGE

In the presence of:- Applicant present in person and Respondents present in person in open court.