



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MERU
SUCCESSION CAUSE 422 OF 2004

GATIRITHIA.....DECEASED
AIDAH KARIMI MURIUNGI.....1ST PETITIONER
JANET MARETE.....2ND PETITIONER
VERSUS
ZIPPORAH GACHERI MUGUNA..... 1ST OBJECTOR
FAITH MUTHONI MWABO..... 2ND OBJECTOR

Law of Succession

- ***Annulment (Revocation of Grant) Order may be given under any of the grounds in Section 76 laws of Succession Act.***

RULING

A Grant of letters of Administration was made to the Petitioners herein on 2.05.2005 after the expiry of the statutory 30 days following publication in the Kenya Gazette.

By a Chamber Summons brought under Section 76 of the Law of Succession Act (Cap 160, Laws of Kenya) and Rules 17, 44 and 73 of the Probate and Administration Rules the Objectors herein sought three orders, namely;

- (a) a stay of further proceedings in this matter pending the hearing of this subject application,
- (b) annulment (revocation) of the Grant of letters of Administration made to the Petitioners herein on 1.03.2005.
- (c) leave to the applicant's Objectors to file their objection and cross petition out of time.
- (d) costs of this application be provided for.

The Application is supported by the Affidavits of the Objectors, and the grounds on the face of the

Summons. The Petitioners filed Replying Affidavits on 31.05.2007, sworn by the Respective Petitioners on 31.05.2007 and in essence denying the contentions by the Objectors.

The essence of the Chamber Summons is that the Grant was procured by the Petitioners in breach of the provisions of Section 76 of the Law of Succession Act, that is to say that the grant was obtained fraudulently by making a false statement or by concealment of fact material to the estate, and filing the cause secretly clandestinely without involving or obtaining the objectors consent.

The Petitioners have denied these averments, and the averment that the Petitioners compromised the chief of Kanyakine Location into issuing the Petitioners the letter giving the particulars of the estate and survivors of the late, Marete Garithia deceased. The Petitioners also state in answer to the Objectors' contention that they have priority over the Petitioners in this matter. They say they are daughters of the deceased even though they are married.

Having perused the grounds of the objection and the supporting affidavit of the objectors and the Petitioner's Replying Affidavit to which the Objectors have not answered or replied, I am satisfied that the sole issue raised by the summons, the subject of this Ruling is who between the objectors (the widows), and the married daughters should administer the estate. The Objectors claim that they and not the daughters have priority in taking our letters of Administrators the daughters.

Considering the provisions of Section 56(1) of the Law of Succession Act, and rule 7(1) 7(e) (iii) of the probate and Administration Rules concerning to whom a grant of administration should be made upon a total intestacy, I am satisfied in law, that widows, their children, sons and daughters are within the first degree of consanguinity with the deceased, and any one of them may apply for, and take out letters of administration of their spouses' parents' estate.

From the Replying Affidavit of Aidah Karimi Murungi; and in particular paragraph 4, 5, 6, and 10 thereof to which as stated above there has been no rejoinder by way of a further affidavit from either of the objectors, it is clear that sufficient consultations were carried out between the Petitioners, the widows (Objectors) the clan elders, and the administration, including the District Officer Abogeta Division, Kanyakine and the Chief Kithangari Location. It is therefore untrue to allege that the Petitioners filed the cause herein secretly and/or clandestinely.

There is consequently no basis for the revocation (or annulment) of the Grant made to the Petitioners on 20th March 2005 and the Summons dated 3.06.2006, is dismissed with a direction that each party bears its own costs.

I observe that there is pending an application dated 9.11.2005 for confirmation of the grant in this cause. I therefore direct the petitioners and objectors to file within the next 30 days their respective or joint affidavits and/or proposals for distribution of the estate of the late Marete Gaitirithia, deceased.

There shall be orders accordingly.

Dated, Delivered and Signed At Meru this 25th Day of May 2009

M. J. ANYARA EMUKULE

JUDGE.