



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MOMBASA

Probate & Administration 42 of 2006

IN THE MATTER OF: THE ESTATE OF UMI OMAR MOHAMED

Alias UMI MOHAMED AL-AMI (DECEASED)

RULING

The background of this matter is as follows: On 22.2.2006, the Assistant Public Trustee, George Nyakundi, petitioned this court for a Grant of representation of the estate of Umi Omar Mohamed also known as Umi Mohamed Al-Amin (hereinafter “the deceased”) who died on 3.2.1997. In his petition, he averred, inter alia, that every person having an equal or prior right to the Grant of representation had consented to the Public Trustee so petitioning. In the supporting affidavit, a list of those who had survived the deceased comprised, Mohamed Omar Mohamed, Twahir Omar Mohamed, Muhidini Omar Mohamed Abdalla Omar Mohamed, Said Omar Mohamed, Ahmed Omar Mohamed, Hafowa Omar Mohamed and Khadija Omari Mohamed.

On 22.5.2006 a Notice of Objection to the making of the said Grant, under Section 68 (1) of the Law of Succession Act, was lodged by Manthura Omar Mohamed, Teba Omar Mohamed and Umi Omar Mohamed (hereinafter “the objectors”), on the ground that their father, who died on 4.11.2000, was entitled to $\frac{1}{4}$ share of the deceased’s estate and under Islamic Law, the objectors are entitled to their father’s said portion.

On 8.6.2006, the Public trustee filed a Notice of amendment of application for Grant which sought to add the name Omar Mohamed Mohamed Hatimy also known as Omar Bin Mohamed Bin Mohamed Al-Barawi as a beneficiary of the deceased’s estate.

On 18.8.2006 by Gazette Notice No. 6373, the Public Trustee published the application for the Grant of Representation and objections if any were invited within 30 days of the Gazette Notice.

On 19.10.2006 a grant of Letters of Administration Intestate of the deceased’s estate was issued to the Public Trustee. When the objectors learnt about the Grant, they, on 28.3.2007, lodged summons for revocation of the said grant on the grounds that the same was obtained irregularly, by concealment of material facts while there was the said objection to the issuance of the same. The application was supported by an affidavit sworn by Manthura Ommar Mohamed, one of the objectors who swore the affidavit on her own behalf and on the authority of the co-objectors. Said Omar Mohamed, one of the sons of the deceased, has also filed an affidavit supporting the application on the ground that he has been sidelined.

The application is opposed and there are affidavits in opposition to the application sworn by Abdalla Omar Mohamed, the son of the deceased. The substance of the opposition is that the only heirs of the deceased are her children and her husband in accordance with Islamic Sharia and the objectors have no *locus standi* to object to the Public Trustee administering the estate of the deceased.

When the application came up before me for hearing on 20.5.2009, counsel agreed to file written submissions which were in place by 2.7.2009. I have considered the record, the application, the affidavits and the submissions of counsel. Having done so, I take the following view of the matter. There is no dispute that the Public Trustee was instructed to obtain a Grant of Representation of the estate of the deceased by the children of the deceased. He complied with their instructions and duly obtained the Grant. Having given notice of amendment of the application to add the widower of the deceased the Public Trustee may have taken the position that the objectors' interest had been taken care of. In their Notice of Objection, the objectors reiterated that they are entitled to their father's share of the deceased's estate. It is the existence of the notice of objection which is the foundation of this summons for revocation of grant. However, the material availed to the court clearly show that the Public Trustee recognizes the interests of the objectors. I say so because, in the affidavit sworn by Abdalla Omar Mohamed, one of the children of the deceased, on 18.10.2007, it is deponed, at paragraph 10, as follows: -

“10. That the office of the Public Trustee will never disinherit Manthura Omar and others this is a false allegation, they will get inheritance without any hindrance as per the distribution by the Chief Kadhi (A.O.M.3).”

I am therefore unable to hold that the grant was obtained irregularly by concealment of material facts from the court. There is therefore no basis to revoke the grant of Representation made to the Public Trustee herein. Way back in June 2006, the Public Trustee sought to secure the interest of the objectors when he filed the Notice of amendment of application for grant. In my view the only flaw in the Notice was to propose the addition of the deceased's widower as a beneficiary. The objectors should have been proposed as the additional beneficiaries. I have also noted that way back on 9.6.2003, a consent order was filed in Cause No. 2 of 2001 that the estate of the deceased be administered by the office of the Public Trustee.

In the premises, the summons for revocation of grant is declined with no order as to costs.

I direct that the objectors be included as beneficiaries entitled to the share of their deceased father under Islamic Sharia when the deceased's estate is distributed.

It is so ordered.

DATED AND DELIVERED AT MOMBASA THIS 24TH DAY OF AUGUST 2009.

F. AZANGALALA

JUDGE

Read in the presence of: -

Kiarie for the applicant

F. AZANGALALA

JUDGE

24.8.2009