

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI (NAIROBI LAW COURTS)

Probate & Admin. Cause 1723 OF 2004

IN THE MATTER OF THE ESTATE OF JOHN MWANGI NJOROGE (DECEASED)

RULING

On the 31st July 2001, letters of administration to the estate of the late JOHN MWANGI NJOROGE were granted to his wife SABINA WANJIRU MWANGI (the respondent) as sole administrator.

On 11th June 2004, STANLEY MAINA (the applicant) who is the eldest son of the deceased, filed a summons dated the same date for revocation or annulment of grant. The grounds given for the request for revocation of grant are:-

- (a) The grant was obtained fraudulently by making of a false statement or by concealment of something material in the case.
- (b) The grant was obtained by means of an untrue allegation of fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently.
- (c) The person to whom the grant was made has produced such inventory or account, which does not constitute the entire estate in particular.

At the hearing, the applicant appeared in person, while the respondent was represented by Ms. Kagongona advocate. The application was heard by way of oral evidence tendered by witnesses. One witness (the applicant) testified before the late Hon. Justice Kamau. The parties agreed to proceed from where the late Kamau J. had stopped. I therefore proceeded to hear the evidence of the other witnesses. The grant of letters of administration herein has not been confirmed. From the documents filed in the succession cause, summons for confirmation of grant have been filed and are pending hearing and determination.

Indeed, this court has jurisdiction under Section 76 of the Law of Succession Act (Cap 160) to revoke or annul a grant of letters of administration, whether or not the same has been confirmed. The court can act either on an application by an interested party, or on its own motion. The considerations to be taken by the court are listed under the subject section 76 of the Act. In my view, the applicant being a son of the deceased, is a genuine interested party. He is a potential beneficiary. Therefore he is entitled to bring this application for revocation or annulment of grant of letters of administration.

I have considered the evidence, given on both sides. It is apparent from the evidence that there is some disagreement or distrust between the applicant and the respondent. The applicant thinks that the respondent wants to disinherit him and has concealed to disclose some assets of the estate. The respondent maintains that it was in fact the applicant who filled the forms which she signed, and in which there was a false disclosure of both assets and beneficiaries. The applicant is literate, while the respondent is semi illiterate. The respondent claims that the errors observed have been corrected following the orders of this court.

I find no justifiable reason to revoke or annul the grant of letter issued by the court. The applicant, in my view, has not proved any of the allegations or the grounds in his summons for revocation of grant. All the

evidence merely shows some suspicion between him and other family members. He appears to be the only person in the family who wants the grant of letters to be revoked. His suspicion herein is not a sufficient ground for revoking the grant of letters of administration. Secondly, all the complaints raised by him can actually be dealt at confirmation stage. He can provide, or file his own side of the information that he wants to be considered at confirmation of grant. The court will consider and determine the same during confirmation of grant. I find no merits in the application and have to dismiss the same.

For the above reasons, I dismiss the summons for revocation or annulment of grant dated 11th June 2004.

Costs in the cause.

Dated and delivered at Nairobi this 16th April 2008.

George Dulu

Judge

In the presence of:

Applicant in person.

Mr. M. Kimani for applicant

Ms. Kagongona for the respondent

Mwangi – court clerk.