



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
SUCCESSION CAUSE 1321 OF 2003

IN THE MATTER OF THE ESTATE OF VDD(DECEASED)

RULING

This is an application filed on 31/3/2005 by MDPS ('the applicant'), who is the mother of VDD, who died in Mumbai, India on 11/12/2002 ('the deceased'), in which she seeks an order for the revocation or annulment of Letters of Administration and Confirmation of Grant made in favour of BDI and RD('the 1st and 2nd petitioners respectively'), herein on 23/7/2003 and 12/5/2004 respectively.

The confirmed grant shows that the assets of the estate, namely properties known as K[.....], K[....] and LR. No [.....] were to be distributed to the administratrix and her two sons one of who is her co-administrator.

She also prays for costs.

The applicant relies on the grounds that the petitioners failed to disclose material facts especially as pertains to the status of the relationship between the deceased and the 1st petitioner who in any event, she avers, had no right to administer her son's estate. She therefore alleges that they acted fraudulently. She also claimed that the two had made attempts to lock her out of the house which stands on LR. No [.....] ('the subject premises'), where she had lived with the deceased prior to his demise, the parties were however able to record a consent, to the effect that she (the applicant) do occupy the subject premises during her life time".

She has sworn two affidavits in which deposes that though her son and the petitioner had separated and entered into a deed of separation, which she annexes as an exhibit to her affidavit, the petitioner nevertheless moved secretly and obtained letters to administer her sons estate thereby disinheriting her an action which she considers fraudulent especially the because she and not the petitioner was the dependant of her late son, and further that the petitioner failed to disclose all her late sons assets, whose details she has availed. She also claims to have been a joint proprietor of some of the assets which the petitioner has listed as an estate asset, namely funds originally held in a bank account in the M[...] Bank (I) Limited in the Isle of Man ('MBL'), which funds the deceased had transferred to S Bank in the Island of Jersey because the former bank was on the verge of closing down.

The 1st petitioner who opposes the application deposes that the she might not have disclosed all the assets of the estate because the applicant and her other sons declined to provide her with the details of all the assets; that though she entered into a separation agreement with the deceased, it did not amount to a divorce. She is of the view that the applicant's other children are capable of looking after their mother; who in any event is of lesser property to herself and her two sons. She also denies that there were any funds in the SCGBL because the deceased had already given his mother her share of form the account in the aforementioned MBL before the said transfer to SCGBL.

Mr. Mbindyo who appeared for the applicant, and who urged the court to disregard the words 'under protest' which appear on the face of the further affidavit, which request was in order for the court would otherwise have disregarded that particular affidavit simply because, it would have meant that the parties were negotiating a compromise and desire that their rights shall not be prejudiced by the negotiation in the event of failure.

He was thus of the view that the petitioner who is the estranged wife to the deceased had no right to petition this court for the administration of the subject estate or even to inherit him, and in this connection, he referred to the deed of separation between the deceased and the petitioner. He also referred to the applicants exhibits to show that the account with the MBL was in the joint names of applicant with the deceased; that the sum of Sterling Pounds 276,865.33 was transferred to account held by the deceased and the respondent.

Mr. Ogude for the petitioners whose stand it was that the applicant prayers are malicious and are meant to disinherit the respondent and her children, urged the court to find that the Deed of separation did not mature into a divorce neither did it amount to a judicial separation; that the 1st petitioner would thus fall within the category section 29 of the Law of Succession Act Cap 160 of the Laws of Kenya ('the Act') which provides that:

"For the purposes of this Part, "dependant" means -

(a) the wife of wives, or former wife or wives, and the children of the deceased whether or not maintained by the deceased immediately prior to his death;

(b) *such of the deceased's parents, step-parents, grandparents, grandchildren, step-children, children whom the deceased had taken into his family as his own, brothers and sisters, and half-brothers and half-sisters, as were being maintained by the deceased immediately prior to his death; and*

(c) *where the deceased was a woman, her husband if he was being maintained by her immediately prior to the date of her death.*

It was also his submission that the transfer of funds for MBL to SCGBL were made two years prior to the death of the deceased and that the applicant would thus be hard placed to prove that she had a right to the funds; that her only remedy lay in filing a civil suit for recovery of the funds against the petitioners in their capacity as the administrators of the Estate. In his view the best solution in the circumstances is to rectify but not to annul the grant.

Section 76 of the Law of Succession Act Cap 160 of the Laws of Kenya ('the Act'), which this applicant relies on, stipulates that:

"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 of its own motion -

(a) *that the proceedings to obtain the grant were defective in substance*

(b) *that the grant was obtained fraudulently by the making of a false statement or by the concealment from the court of something material to the case;*

(c) *that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently;*

(d) *that the person to whom the grant was made has failed, after due notice and without reasonable cause either –*

(i) *to apply for confirmation of the grant within one year from the date thereof, or such longer period as the court has ordered or allowed;*
or

(ii) *to proceed diligently with the administration of the estate or; or*

(iii) *to produce to the court, within the time prescribed, any such inventory or account of administration as is required by the provisions of paragraphs (e) and (g) of section 83 or has produced any such inventory or account which is false in any material particular; or*

(e) *that the grant has become useless and inoperative through subsequent circumstances".*

There is no doubt that the applicant and her late son maintained separate accounts with the MBL, namely account numbers 06514.010 and 06515.010, respectively from which the sums of Sterling Pounds 276,865.33 was transferred from her account to their joint account with SCGBL, namely Account No. [...], while the sum of Sterling Pounds 103782.28 was transferred from the deceased's account to the aforementioned account which he held jointly with the applicant in SCGBL. The four transactions were made on 13/10/1999, after which their individual accounts in MBL were closed. It is trite that the holders of a joint account own the same in equal undivided shares, and that in case of the death of a joint holder, the survivor is the only person recognized under the law as having any title to his interest in the share or account. That would obviously mean after the demise of the deceased in this cause, the funds held in the aforementioned account with SCGBL became the property of this applicant to the exclusion of all others including this petitioner and her children and all those who would otherwise claim dependency.

But that is not all for the Deed of Separation of 25/6/2001, whose existence is admitted by the petitioner, clearly provided that the two would *"waive their entitlement to full disclosure of each others financial resources and the financial needs obligations and responsibilities"* which each had then and was likely to have in the foreseeable future; they also *"intended that it be in full settlement of all rights and claims and duties they have to each other in law"*. The petitioner received a lump sum and having acknowledged the fact that each one of them would retain as their own absolute property any asset or assets which they then held or would hold in their respective sole names at the conclusion of that deed, it would in my humble opinion, preposterous for the petitioner to assume that she had any more rights to the deceased's assets after the date of that deed, and in my view though she would have had a right to petition this court for the administration of her estranged husband's estate, in her capacity as his wife, she however had no right to inherit him at all.

In view of the above, I find that the 1st petitioner acted fraudulently by making a false statement. She also concealed the fact that the deceased had provided for her full during his lifetime, which non disclosure was material to the cause, and which amounted to an untrue allegation of a fact. She has not alluded to the fact that she acted in ignorance or that the omission was inadvertently, and given all the above facts, I doubt that she would lay such a claim. In the circumstances, it is only proper that I revoke the grant issued herein, which I now do.

Given the fact that the applicant who is now aged over 84 years has intimated that she need not be an administrator, but should be catered for as a beneficiary, it would not serve the interests of justice to annul or revoke the grant in its entirety, and I would thus order the nullification and revocation of the appointment the 1st petitioner and further that this applicant do nominate any one of her sons who should be substituted as an administrator of the estate in place of the 1st administrator. The two administrators shall be required to provide this court with a full inventory of the estate of the deceased and with the proposed mode of distribution of the said assets. They shall so comply within the next sixty days.

The costs of this application shall be met by the estate.

Dated and delivered at Nairobi this 28th day of November 2008.

JEANNE GACHECHE

Judge

Delivered in the presence of:

Mr. Makau holding brief for Mr. Mbindyo for the applicant.

Mr. Rombo holding brief for Mr. Ogude for the petitioners.