



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)**

Succession Cause 2097 of 2004

IN THE MATTER OF THE ESTATE OF WITHERARO KAMAU (DECEASED)

RULING

Before me is a Summons for revocation of grant of letters of administration dated 20th June 2003 and filed by JOSEPH MAINA KAMAU the applicant in person. The summons was actually filed on 8th June 2004. The summons seeks for orders that the letters of administration in the estate of WAITHERERO KAMAU, which were issued on 28th April 1993 be revoked or annulled. The grounds for seeking revocation were that the administrator one DAVID MACHARIA KAMAU fraudulently obtained the grant and the same was confirmed without the knowledge of the applicant while the applicant was the first born of the deceased and the one who had the right to be the administrator of the deceased estate. The summons is supported by the affidavit of the applicant sworn on 23/6/2003. Filed with the summons was a copy of the grant of letters of administration intestate issued by the Principal Magistrate at Muranga on 8th April 1993, and a copy of the certificate of confirmed grant of letters of administration issued by the same court on 17th March 1994. I observe that, according to the certificate of confirmed grant, the asset of the deceased is reflected one land asset LOC.10/KAHUTI/274 which was to be registered jointly in the names of two people, that is DAVID MACHARIA KAMAU and DAMARIS NJOKI.

Though the respondent administrator DAVID MACHARIA KAMAU and other beneficiary DAMARIS NJOKI (who appears to be a sister of DAVID MACHARIA KAMAU) were served, they neither filed responses, nor did they appear in court on the hearing date. When the summons came up for hearing before me, the applicant submitted that he was the eldest son of his deceased father and was entitled to be issued with the letters of administration. He contended that the appointed administrator was even younger than his sister DAMARIS. He stated that the letters of administration were issued and confirmed without his knowledge. He also stated that he had even proposed a mode of distribution in the supporting affidavit.

This is an application for revocation of letters of administration. It is not opposed as the administrator DAVID MACHARIA KAMAU and the other beneficiary DAMARIS NJOKI did not either file any responses to the application, nor did they appear in court on the hearing date.

From what is deponed in the supporting affidavit, the deceased WAITHERERO KAMAU was the mother of the applicant, and had died on 28th December 1969. The father of the applicant KAMAU

GAKWA had died earlier and the said WAITHERERO KAMAU was the administrator of the estate of her late husband, and that is how she came to be the owner of the subject land asset. It was land that devolved to her on the death of her but husband, KAMAU GAKWA. It is also deponed that the applicant shifted to Nairobi after the death of his mother and the administrator, around 1994, went around secretly and subdivided the land that is KAHUTI LOC.10 No. 274 into plot numbers 3032 and 3033 and sold parcel No 3032 to one JOHNSON MUNA.

This court has jurisdiction under section 76 of the of the law of Succession Act (Cap 160) to revoke a grant of representation, at any time, whether or not confirmed. In our present case the applicant alleges fraud as the ground for seeking revocation. Indeed, that is one of the grounds on which a grant of presentation may be revoked or annulled by the court. The relevant part of section 76 provides –

“76. A grant of presentation, 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 –

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

This application as made on 8th June 2004. Letters of administration were confirmed on 17th March 1994. That was a period in excess of ten years. That is a long period indeed. However, section 76 confers on this court powers to revoke or annul a grant **at any time**, without any time limitation. Therefore though there is that long lapse of time of more than 10 years, that delay cannot operate as a factor against the applicant.

Rule 44(2)(a) of the Probate and Administration rules provides that an applicant for revocation or annulment of grant shall disclose the extent to which the deceased’s estate has been administered. It provides –

“44(2) There shall be filed with the summons an affidavit of the applicant in form 14 for revocation or annulment identifying the cause and the grant and containing the following particulars so far as they are known to him –

(b) the extent to which the estate of the deceased has been or is believed to have been administered, together with any other material information.”

Though the applicant has not disclosed the extent to which the estate has been distributed in his supporting affidavit, I find this not to be fatal to the application. He might not have known as to what extent the estate has been distributed, and therefore he is not, in law, required to disclose what he does not know.

I have perused the documents filed by the administrator DAVID MACHARIA KAMAU in the proceedings herein for the grant of letters of administration. In the petition for grant of letters of administration, he listed only himself as the survivor of the deceased. The applicant herein has now stated that he was the elder brother of the administrator and that they even had a sister called DAMARIS. Section 51(1) and (2) of the Law of Succession Act (Cap.160), which is couched mandatory terms, requires certain disclosures by petitioners for letters of administration. The relevant part of the section states –

“52(1) An application for grant of representation shall be made in such form as may be prescribed, signed by the applicant and witnessed in the prescribed manner.

(2) An application shall include information as to-

(g) in cases of total or partial intestacy, the names and addresses of all surviving spouses, children, parents, brothers and sisters of the deceased, and of the children of any child of his or hers then deceased”

The administrator did not disclose the name of the applicant. The grant of presentation was also confirmed without disclosing the applicant as a son of the deceased.

That was clearly contrary to the mandatory provisions of the law and also amounted to concealment of material facts that would have to be considered by the court in the succession proceedings herein. That was an incurable default on the part of the administrator. For those reasons I find justification in revoking the letters of administration herein.

The applicant stated in his submissions that he had proposed a mode of distribution in his application for revocation of grant. I find no such proposal filed. In any case, that is probably jumping the gun at this time, as this was not an application for variation or amendment of the grant. As it is now, I have revoked the letters of administration herein and the applicant or even the respondent or all of them together can apply for fresh letters of administration according to the provisions of the law applicable.

For the above reasons, I allow the application and revoke the letters of administration herein which were issued and confirmed in the name of DAVID MACHARIA KAMAU. I order that the costs of this summons will be in the cause.

It is so ordered.

Dated and delivered at Nairobi this 12th day of February 2007.

George Dulu

Judge

12/2/2007

In the presence of –

Joseph Maina Kamau the applicant.

George Dulu

Judge