



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

SUCCESSION CAUSE 187 OF 2006

IN THE MATTER OF THE ESTATE OF M'TWARUCHIU KAMANGA - DECEASED

EVANGELINE NTHIIRA M'TURUCHIU PETITIONER

VERSUS

M'NKANATA M'TURUCHIU OBJECTOR

RULING

A limited letters of administration was made to the petitioner herein on 10th November, 2006. The applicant herein has brought the present summons to annul or revoke the grant on the grounds that the petitioner filed the cause secretly and without consulting him as the deceased's first son.

He asserts that the grant was obtained fraudulently by the making of false statement or concealment of material facts from the court. The applicant further states that he learnt of the cause after the period for lodging objection had passed.

The application is opposed. The petitioner maintains that she filed the cause after consulting all the family members, the applicant included. That the applicant is acting in bad faith. Briefly those were the arguments.

Reading the grounds as set out in the applicant's affidavit in support of the application and the summons one cannot tell whether the applicant wishes to be granted leave to object out of time or what he infact wants is the revocation or annulment of the grant.

I will go by his prayers clearly articulated by his counsel and represented in his summons. The application is brought under Section 76 of the Law of Succession Act, under which a grant of representation, whether confirmed or not, and at any time may be revoked or annulled if the court is satisfied that;

- (i) the proceedings to obtain the grant were defective in substance
- (ii) the grant was obtained by means of untrue allegation of a fact
essential in point of law to justify the grant
- (iii) 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

(iv) the person to whom the grant was made has failed to apply for confirmation within 1 year, or to proceed diligently with the administration of the estate, or to produce to the court any inventory as may be ordered; or

(v) the grant has become useless and inoperative.

The applicant's application is based on the ground that the grant was obtained by proceedings which were defective in substance; that it was obtained fraudulently; that it was obtained by means of untrue allegation.

Indeed the applicant based his application on all the grounds as set out in Section 76 of the Law of Succession Act except the last two grounds. In an application such as this with, far reaching implications, it is not enough simply to reproduce the grounds as contained in the statute. Proof of each ground is mandatory.

Indeed the applicant has not shown how the grant was obtained fraudulently or what untrue allegation was made by the petitioner to obtain the grant, or even the defect in the proceedings in obtaining the grant. I have personally perused the file and I can say that the proceedings are proper. As a matter of fact the petitioner made full disclosure including the fact that the applicant is the deceased's son.

If the applicant was not satisfied with the appointment of the petitioner to administer the estate of the deceased and the period for lodging objection has lapsed, the only option to him was to apply under Rule 17(2) of the Probate and Administration Rules for extension of time but not for revocation of grant.

To apply for revocation the applicant must satisfy Section 76 aforesaid. It is clear from the foregoing that this application cannot succeed. It is dismissed with costs to the petitioner.

DATED AND DELIVERED AT MERU THIS 22ND DAY OF JUNE, 2007

W. OUKO

JUDGE