



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
Succession Cause 124 of 1999

IN THE MATTER OF THE ESTATE OF ABDULREHMAN MOHAMED MOHAMED

RULING

There is an application before the court filed for revocation of grant made in this estate on 2/12/1999. The grant was issued to two persons namely Mohamed Abdulrehman Mohamed and Mohidin Abdulrehman Mohamed. Since then one administrator Mohamed Abdulrehman Mohamed died on 16th January 2002.

The application is grounded on the grounds listed on the body of the application namely Grant was obtained fraudulently by making false affidavits and by concealment of material facts to the case and that the proceedings to obtain grant were defective and also the administrators have failed to proceed diligently with the administration of estate and have failed to distribute the estate as required.

The court is asked to make necessary orders under section 52 Cap 160 Laws of Kenya which makes it an offence to willfully or recklessly make statement which is false in any material particular.

The application was supported by affidavit of the applicant. The applicant who is a beneficiary of this estate is authorized by 8 other beneficiaries whose names are as listed in annexure 'A AH2' to file this application.

There is annexed certificate of confirmation of grant. In that certificate dated 13/9/2000 the estate was to be distributed according to sheria law and the shares of the beneficiaries and their identities are set down therein. The applicant now states that the assets as stated therein are grossly under valued and several properties are not accounted for and they were omitted in the lists.

It is admitted that the surviving administrator resides in Manchester England. (see replying affidavit par.9). He admits he did not know the actual value of properties in Kenya but nevertheless properties were valued by Dato Kithikii in April 2002 as per valuation report annexed.

The respondent asserts that the estate has been distributed since April 2002 and each beneficiary collects his/her own rents. In paragraph 24 replying affidavit he confirms that part of the estate is not administered. Both parties gave oral evidence. Evidence was that the parties had by consent recorded and signed by 15 of beneficiaries but undated did accept the distribution of the deceased estate as stated in that document stated Distribution Agreement.

I have examined the stated agreement. It is to be noted that beneficiary (1) Munira A.M. Hatimy did not sign (No.7). (2) Umi K.A.M. Hatimy (No.9) did not sign (3) Fatma M. Ali (No.15) (4) Halima Mohamed Alamin although Fatuma (No.8) signed she is the first to sign the authority for this application together with Zainab (No.11) Rukiya (No.10), Zulfa (No.13) Sheikh Nurain Muhamad (No.14) and of course the applicant himself. Their complaints are that the estate has not been distributed. And that some assets distributed to the beneficiaries are registered in the names of other beneficiaries.

I have perused the copies of the documents annexures marked "MAM" by the Respondent. These documents are not abstract of titles. The current status of the registers at Lands Office is not disclosed. There are other plots annexed at page 41 – 85. Those documents are dated in the fifties (1958). The present status can not be confirmed. It is sworn that the deceased did register several properties in the names of the beneficiaries during his lifetime. Provision of Section 42 of Succession Act provide that where an interstate has during his life time paid given or settled property to or for the benefit of a child grandchild or house the property shall be taken into account in determining the share of the net interstate estate finally accruing to the child.

Also the exhibited copies of the titles are in the names of guardians of the beneficiaries who must have been minors at the time of registration. No change has been made to complete distribution. None of the beneficiaries are now minors. It is therefore not sufficient for the respondent to say he has distributed the estate to a large extent. There is still remaining the distribution according to shariah law as set out in the certificate of confirmation. Parties have not raised the effect of section 42 Succession Act on Muslim succession. However it is clear the estate has not been administered yet. Matters remain as the deceased left them.

I have considered the evidence and arguments put forward by the parties. The applicant moved under section 76 of the said Act (b) and (d) on the grounds of fraud and or concealment of relevant and material facts and generally that the administrator has failed to proceed diligently with the administrative of the estate and distribution of the assets. It is my finding that these grounds are proved. The administration of estate ought to be undertaken by a person who is resident in Kenya. As it is the respondent has engaged the administrator of the co-administrator who is now deceased to deal with the estate without any order of the court. I also find the so called Distribution agreement invalid and the said agreement not signed by all beneficiaries contradicts the shariah law.

According to valuation dated 12/4/2002 the properties are not of the same value. There is large discrepancy in value ranging from 5 million to as low as 500,000/=. It is clear therefore the shariah law of distribution is not followed. During the hearing of this application the respondent filed what he called accounts. This document cannot be said to be administrators account. He has not shown any income from the properties. He shows only his expenses. He has not shown that all properties have been transferred to the beneficiaries.

I therefore find that the estate shall go to waste and that the beneficiaries shall lose their shares if delay in distribution continues. I therefore allow the application and grant orders sought. However regarding appointment of another administrator or administrators the applicants shall appoint one or more of them to take up administration.

Costs shall be paid by the Respondent himself.

Dated this 24th day of May 2006.

J. KHAMINWA

JUDGE

24/5/2006

Khaminwa J

Murimi – clerk

Mr. Mutubia for Applicant – present

Several beneficiaries – present

N/A for Respondent (Mabeya)

Ruling read in open court.

J. KHAMINWA

JUDGE