



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

Succession Cause 170 of 1994

IN THE MATTER OF THE ESTATE OF MWIRICHIA AMWIRI ALIAS

M'MWIRICHIA AMWIRI (DECEASED)

M'ILONGI M'MUTIGA PETITIONER

VERSUS

BEATRICE M'ITABU M'LARURU OBJECTOR

RULING OF THE COURT

The application before me is a Chamber Summons dated 19.3.1999 and brought under section 76(a) (b) and (c) of the Law of Succession Act Cap 160 Laws of Kenya and Rule 44 of the Probate and Administration Rules. Section 76 provides that a grant of representation whether confirmed or not may at any time be revoked or annulled if the court decides, either on application by any interested party or of its own motion on the following grounds:-

- (a) That 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)

Rule 44 of the P&A Rules provides for the manner of going about with an application pursuant to the provisions of section 76 of the Act as set out above.

The applicant prays that the grant of letters of administration made to the petitioner on 24.4.96 be revoked on the grounds that:-

- (a) The grant was fraudulently obtained.
- (b) The applicant concealed or failed to disclose the fact that the applicant was the rightful heir to the deceased's estate.

In his supporting affidavit made and sworn by the applicant on 19.3.1999, the applicant has deponed that the succession cause was filed without his knowledge. That the deceased was the applicant's father and that the deceased had two other children beside himself. That the petitioner lied to the court regarding the heirs to the deceased's estate by giving the names of his own son and wife as the rightful owners of

the deceased's estate. That the deceased was an uncle to the petitioner.

The petitioner filed his replying affidavit made and sworn on 5.8.99. The petitioner contended that the application for grant was filed way back on 7.6.1994 and that the grant was issued and subsequently confirmed on 24.4.96. The petitioner admits at paragraph 7 of the replying affidavit that the deceased was his uncle but asserts that the applicant is married and has no claim to the deceased's land. Further, that the applicant never objected to the gazettment and that there has been inordinate delay in bringing the application.

When the application came up for hearing, counsels appearing for both parties relied on their respective pleadings.

I have carefully considered the pleadings on record and the provisions of section 76 of the Law of Succession Act. I have reached the conclusion that this application has merit. It is not in dispute that the petitioner is a nephew to the deceased. It is also not in dispute that the applicant is a child of the deceased. It matters not that she is a female child and that she is married. Under the provisions of section 38 of the Act, the applicant is rightfully entitled to her deceased father's estate. It is also clear that under the provisions of section 29 of the Act the applicant ranks higher in the order of consanguinity than the petitioner.

Secondly, it is clear to me from the pleadings that the petitioner made fraudulent statements about his relationship with the deceased at the time of applying for the grant. There is no mention of the applicant as a child of the deceased. The petitioner described himself as a son to the deceased when he has now admitted in his replying affidavit that the deceased was his uncle. The petitioner did not answer to the applicant's contention that Cypriano Kairithia and Mukiereria Ngiri are his son and wife respectively, whereas in his application for the grant, the two were said to be the minor son and mother of the deceased respectively. It is my view that these statements were made falsely and deliberately to mislead the court into issuing the grant of Letters of Administration to the petitioner at the expense of the applicant.

The fraud by the petitioner was perpetrated further by a letter dated 10.6.91 from the office of the chief of Mikinduri Location in which it was alleged that the petitioner herein was related to the deceased by way of marriage. The petitioner's conduct was fraudulent inside out and no wonder that he said nothing in rebuttal to the applicant's contention regarding the petitioner's son and wife. All that the petitioner wanted was to get the deceased's parcel of land number MIKINDURI/ATHWANA/272 measuring 0.9 hectares or thereabouts, no matter what the cost.

The petitioner has contended that the applicant is guilty of inordinate delay in bringing this application. Section 76 places no limit on when an application of this nature can or may be filed. The only requirement is that the court decides the matter in the circumstances set out in any of paragraphs (a) (b) or (c) of section 76. The revocation or annulment can be at any time and whether or not the grant of representation has been confirmed.

In the circumstances of this case, I do allow the application. I order that the grant of representation issued to the petitioner on 5.6.95 and confirmed on 24.4.96 be revoked.

The grant of Letters of Administration Intestate shall now be issued to the applicant.

The applicant shall have the costs of this application.

It is so ordered.

Dated and delivered at Meru this 27th day of July 2005.

RUTH N. SITATI

JUDGE