



REPUBLIC OF KENYA



In re Estate of Stephen Macharia Murai (Deceased) (Succession Cause 890, 741 & 50 of 1998 (Consolidated)) [2004] KEHC 2411 (KLR) (Family) (30 April 2004) (Ruling)

*IN THE MATTER OF THE ESTATE OF THE LATE
STEPHEN MACHARIA MURAI (DECEASED [2004] eKLR*

Neutral citation: [2004] KEHC 2411 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)

FAMILY

SUCCESSION CAUSE 890, 741 & 50 OF 1998 (CONSOLIDATED)

MK KOOME, J

APRIL 30, 2004

IN THE MATTER OF THE ESTATE OF THE LATE STEPHEN MACHARIA

MURAI (DECEASED)

RULING

1. This is an application for revocation of the grant of Letters of Administration made to Josphine Watiri Michuki and Nicara Mugwe Steffano on 11th day of August 1998 in respect of the Estate of the Late Stephen Macharia Murai. The applicant Sarah Wanjiru Mwangi, was the petitioner in PM Court Succession Cause No. 50 of 1998 in Murang'a she had applied for the grant of probate of a written will of the deceased and issued citations to the interested parties and persons having beneficial interests in the deceased estate.
2. The administrators herein applied through Succession Cause No. 741 of 1998 for the PM Court Murang'a file to be transferred to Nairobi and the consolidation with Succession Cause No. 741 of 1998. I have perused the order that was made on 8th June 1998 which reads as follows:

“That Succession Causes Numbers 29 and 50 of 1998 now pending before the Senior Resident Magistrate’s Court at Murang’a be and are hereby called in to this honourable court to be dwelt together with High Court of Kenya at Nairobi Succession Cause Numbers 741 and 980 of 1998 pending before the honourable Court”
3. It would appear that on 18th February 1999 there was the following appearances. Mr. Wandai holding brief for Mr. Muraguri, Mr. Kigano Muturi for the person cited. The court recorded the following order by Kuloba J.

“By consent stood over generally”



4. The above order was recorded in HC Succession Cause No. 741 of 1998 and there are no further proceedings that took place in Cause No. 741 of 1998. The applicant complains that the grant was applied for in HCC 890 of 1998 without her knowledge and hence the proceedings to obtain the grant were defective in substance. Secondly 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. The applicant was not notified of Succession Cause No. 890 of 1998 which was filed without her knowledge and it is under that cause that the grant was issued as well as the certificate of confirmation.
5. This application was opposed by the administrators. They relied on their joint affidavit sworn on 23rd March 2001. The matters deposed to can be summarized as follows:
 - a) That the applicant was aware of Succession Causes No. 741 and 890 of 1998 and of the order that consolidated the PM Court Muranga File No. 50 of 1998 mentioned the two causes and hence she was aware of the proceedings:
6. Secondly the applicant is guilty of laches and/or acquiescence and in this regard the counsel for the administrators referred the *Text on the Law of Succession Mellows*, Butter Worths 1978 page 310 which states that

“The Court will not revoke a grant if there is any other way of achieving a proper result”
7. The other text quoted is the *Law of Succession Testate & Intestate* Sir Donald Hughes Parry Sweet & Maxwell, 1961 page 191

“The court will not revoke a grant of Probate or Administration arbitrarily. Thus it will not revoke a grant on account of the administrator’s omission to bring an inventory or account or if the applicant has been guilty of laches and acquiescence in the first grant”.

The respondent’s argued that the applicant did also not take any steps in respect of her application for probate as filed in P & A Cause No.50 of 1998.
8. I have given due consideration to all the matters raised in the application for revocation and submissions by both counsel. I have also perused the court records in P & A Causes No. 890 of 1998, 741 of 1998 and Murang’a PM’s Court 50 of 1998.
9. According to the order that transferred the Murang’a file, cause No. 890 of 1998 is quoted 980. It would appear that the proceedings of the issuance of the grant of Letters of Administration and confirmation of grant were made in Cause No. 890 of 1998. I am also not able to comprehend why cause No. 890 of 1998 was initiated if there was already a High Court Cause No. 741 of 1998 whereby the order of the transfer was made. For this reason it is clear that the applicant who was an interested party was not notified when the grant was made and confirmed. The grant was confirmed on 5th March 1999 and the applicant moved this court almost two years later for the revocation. Is she guilty of Laches? I have given due consideration to the provisions of Section 76 of the *Law of Succession* which provides

“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 making of a false statement or by the concealment from court of something material to the case.”



10. Since there is an allegation of a written will and the file was consolidated, the applicant ought to have been notified. Accordingly in the interest of Justice and fairness the grant made herein and confirmed on 5th March 1999 should and is hereby revoked to enable the court consider the alleged written will.

Each party shall bear their own costs of this application.

RULING READ AND SIGNED ON 30TH APRIL 2004.

MARTHA KOOME

JUDGE

