

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
MISC. SUCCESSION CAUSE NO. 9 OF 2001

IN THE MATTER OF: THE ESTATE OF ABDULMAJID JUMA

IBRAHIM JUMA APPLICANT

- VERSUS -

JAFFER ALI JUMARESPONDENT

R U L I N G

The application before Court seeks an order of revocation of a Grant of Letters of Administration issued to one JAFFER ALI HUSSEIN on the 10th September, 2001 on the grounds that the same was obtained fraudulently by making of false statement and/or by concealing material facts and further that the proceedings to obtain the grant were defective in substance. The application is brought under the Provisions of Section 76 of the Succession Act and Rule 44 of the Probate and Administration Rules.

The deceased ABDUL MAJID JUMA and his wife perished in a road accident on the 1st November, 1998 leaving behind one child aged 17 years and who is physically and mentally disabled. Both parties are in agreement that this child even when the parents were alive lived and was cared for by the deceased's brother IBRAHIM JUMA and his family. Ibrahim Juma took the necessary action and applied to be issued with a full grant in cause No. 182 of 1999. In the meantime a younger brother to the deceased and Ibrahim Juma the Applicant herein named JAFFER ALI JUMA HUSEIN filed a separate Petition for the Grant of Limited letters of Administration on behalf of the same estate in Cause No.9 of 2001 and a Grant issued on the 10th September, 2001 which the applicant seeks to be annulled.

Mr. Gathuku for the applicant Ibrahim Juma submitted that Mr. Jaffer Ali Juma Hussein had failed to disclose the existence of the other family members from whom consent should have been obtained and further and most important he failed to disclose that the deceased couple had a disabled child as a dependant.

Mr. Gatonye on his part submitted that no harm had been occasioned by the issuance of the said Grant as it was obtained with the sole purpose of pursuing proceedings for damages in the respect of the deceased .

The Provisions of Section 67 (1) of the Succession Act are clear and provide as follows:

“No grant of representation other than a Limited grant for collection and preservation of assets, shall be made until there has been published Notice of application for grant inviting objections thereto to be made known to the court -----“

It is not denied that JAFFER ALI JUMA HUSSEIN is a younger brother to Ibrahim Juma and that there is a child who has lived and been cared for by Ibrahim and his wife. There is no logical explanation as to why Jaffer Ali Juma Hussein did not find it necessary to inform the current guardian of the child in whose benefit the estate should be preserved. The condition of the said child should put all Concerned to alert that it is important to be transparent for his sake.

In the circumstances I will revoke the Limited Grant of letters of Administration issued to Jaffer Ali Juma Hussein and direct that the petition for a full grant in cause 182 of 1999 be pursued and finalized within the next 6 months from the date herein. Jaffer Ali Juma Hussein will then be at liberty to raise any objections as provided for under the Provisions of the law. The costs of the application shall be to the applicant.

Dated and Delivered at Mombasa this 28th February, 2002.

P.M. TUTUI

COMMISSIONER OF ASSIZE