



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
SUCCESSION CAUSE NO. 828 OF 1994

IN THE MATTER OF THE ESTATE OF WILFRED THUO NGUGI

IN THE MATTER OF THE ESTATE OF WILFRED THUO NGUGI

(DECEASED)

RULING

This summons dated 11th July 2001 for revocation or annulment of grant is praying for an order that the grant of letters of administration for the estate of Wilfred Thuo Ngugi (deceased) be revoked or annulled on the ground that

- “ (a) The proceedings to obtain the grant were defective in substance.
- (b) The grant was obtained fraudulently by making of false statements and by the concealment from the court of facts material to this case
- © The grant was obtained by means of untrue allegations of facts essential in point of law.”

The summons is filed in Form 107 which is used under Rule 40 (1) of the Probate and Administration Rules but the body of the summons omits reference to the provisions of the law under which the summons is brought.

The affidavit filed by Daniel Gatenjwa Thuo, the Objector Applicant, in support of the summons reveals that the Applicant is a Co-Administrator in this Succession Cause together with Lilian Muthoni Thuo who is the Applicant's mother and the Deceased's widow and that the two were made co-administrators by this court's order dated 7th February 1995. The affidavit reveals that thereafter the relationship between the two co-administrators continued to be bad as Lilian Muthoni Thuo unsuccessfully made attempts to remove the court's order dated 7th February 1995 and that the Applicant initiated several meetings with beneficiaries and clan members to distribute the estate of the deceased but none of the meetings reached a fruitful end and one day the Applicant was surprised to learn that Lilian Muthoni Thuo, her co-Administrator and now Respondent in this summons, had alone and without the knowledge and consent of the Objector/Applicant applied for and obtained a certificate of confirmation of the grant issued on 7th February 1995. The Applicant claims that although he had seen a letter in the court case file showing he had signed it, allowing his co-Administrator to have the grant confirmed, that letter is a forgery. The Applicant does not accept that there was distribution of the estate of the deceased during the confirmation of grant as the Applicant claims that the entire estate has been conveyed to his co-Administrator alone and beneficiaries have not been given anything.

In the premises therefore, the Applicant urges this court to revoke the grant confirmed on 4th July 2001.

That is what Mr. Mugo, counsel for the Applicant, emphasized in his submissions during the hearing of the summons pointing out that on 4th July 2001 the summons for confirmation of grant was not listed in that day's cause list and that confirmation was done administratively without giving notice to the Applicant as co-administrator and that the court was misled that the co-administrator was consenting, that the Respondent will now disinherit the Applicant as no good faith can be imported on the side of the Respondent, that on 2nd July 2001 when the Applicant had information an application for confirmation had been filed, the cause list for that day did not include this case and the Applicant, though checking, could not know the hearing date given was 4th July 2000 when, according to the Applicant, the case was also not in the cause list and no party appeared.

At the end Mr. Mugo clarified that his client does not want the revocation of the grant dated 7th February 1995 but he wants revocation of the confirmed grant issued on 4th July 2001. That raises the question as to whether there are two grants, one dated 7th February 1995 and the second one dated 4th July 2001. I will later come to that question. In reply Mr. Kivuva for the Respondent opposed the application stating that the Applicant has not proved the matter was not listed on 4th July 2001 and further proved that he was not aware of the hearing date. Counsel said the Applicant had information but did nothing having signed a consent to the confirmation at a meeting of the family including beneficiaries.

Mr. Kivuva pointed out that it is not correct to say that the Respondent disinherited the Applicant, as the Respondent was only registered as a trustee for the beneficiaries who were to share the assets in the estate in equal shares. The beneficiaries include the Applicant and the mode of distribution was agreed, the Applicant as one of the children of the Respondent and one of the beneficiaries, being made entitled equally with other children of the Respondent. The Applicant is coming to court simply because he wants more and this application be dismissed.

Having carefully considered all that was brought to my attention during the hearing of this application, I find that there is no dispute that the said application being summons dated 11th July 2001 for revocation of grant was filed by the Respondent alone. But, although the Applicant is denying that he consented to the filing of that summons, evidence on record suggests he actually consented as he has not adduced sufficient evidence to prove that the signature attributed to him in the consent is not his. If he thought the summons for confirmation of grant was to be heard on 2nd July 2001, the Applicant may not have known that the same was to be heard on 4th July 2001, but I do not think he was justified to be so ignorant because he is a person who had previously been involved in the prosecution of this matter and knew where to get the relevant case file and how to get it and where the Registry handling the case was. He would have easily obtained, and may even have obtained, the information he wanted from that Registry.

The Respondent does not want to admit. But from the record in this case file, the summons for confirmation of grant was not on 4th July 2001 listed in the cause list but was heard all the same and that was in the absence of the parties. Mr. Mugo has described that procedure as handling the application administratively and submits that that was wrong. With due respect that view is not correct as in the circumstances of this case, the matter was proceeding without protest under Rule 40 (8) of the Probate and Administration Rules, the Applicant having signed a consent and there being no affidavit of protest filed. That procedure is correct and lawful,

notwithstanding the current practice where such unopposed summons are normally included in cause lists and the parties made to appear in court on the hearing date. There are good reasons for the parties to appear as there are always a number of questions to be answered and corrections to be made. But all that does not vitiate the validity of Rule 40 (8) concerning unopposed summons for confirmation of grant provided applicants are keen and careful doing all that the law requires be done avoiding mistakes and being truthful and honest.

Having said the above, I now go back to the question I posed earlier whether there were two grants of letters of administration in this matter, one dated 7th February 1995 and the second one dated 4th July 2001. Mr. Mugo said that his client did not want the grant dated 7th February 1995 revoked but wanted revocation of the confirmed grant issued on 4th July 2001.

There should be no confusion as only one grant of letters of administration has been issued in this matter and that is the grant dated 7th February 1995. If a grant has to be revoked in this matter therefore, it is the grant dated 7th February 1995 that should be revoked. That is the grant which was confirmed on 4th July 2001 and there is no other. What was issued on 4th July 2001 was a certificate of confirmation of that one grant. It was not a different grant and it is not therefore correct to say that a grant other than the grant issued on 7th February 1995 was confirmed on 4th July 2001.

It follows that when Mr. Mugo says that his client does not want the grant of letters of administration issued on 7th February 1995 revoked, the Applicant finds nothing wrong with that grant and that therefore the grounds relied upon by the Applicant as set out in the body of his summons dated 11th July 2001 have no genuine basis.

It seems to me that the Applicant being desirous of filing an application to complain about the Respondent's application for confirmation of grant and the issuance of the certificate of confirmation thereof, went to section 76 of the law of succession Act and blindly picked out grounds (a) to (c) without stopping to think whether those grounds are really relevant for the application he was making. As a result the affidavit dated 11th July 2001 filed by the Applicant in support of this summons dated 11th July 2001 does not actually support the summons. The summons is complaining about the grant while the affidavit is only complaining about what happened during the application for confirmation of the grant. It is a situation similar to a case where the evidence adduced does not support the charge, if criminal, or does not support the Plaintiff, if civil.

The Applicant having relied upon the grounds in section 76 of the law of succession Act never cited that section nor did he cite any provision of the law.

Where a person is aggrieved by what happened during the application for confirmation of a grant of letters of administration, there are relevant provisions of the law to use to have the resulting certificate of confirmation revoked or set aside or rectified. I am not the Applicant's advocate and should not say more than that. I should however add that it is not proper to use section 76 or talk about revocation of grant in those cases. In other words where the complaint of the applicant relates to the certificate of confirmation only, revocation or annulment of the relevant grant should not be asked for in the application as the certificate of confirmation of a grant can be dealt with without affecting the validity and soundness of the parent grant of letters of administration or the parent grant of probate.

From what I have been saying above therefore, not only do I find this summons dated 11th July 2001 lacking in merits but also find it improper and incompetent. Accordingly the said summons be and is hereby dismissed with costs to the Respondent.

Dated this 14th day of June 2002.

J.M. KHAMONI

JUDGE