



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
SUCCESSION CAUSE NO. 642 OF 2000

**IN THE MATTER OF THE ESTATE OF GACHUNGA GACHAMBA
(DECEASED)**

FRANCIS NGUGI APPLICANT

VERSUS

1.ELIZABETH WANJIRU GACHUNGA

2.MONICA WAMBUI GACHUNGA

3. ALLAN PAUL NJOROGE RESPONDENTS

RULING

On the 2nd July 2002 Mr. Mburu Mbugua, Advocate for the Applicant/Objector Francis Ngugi Njuguna, fixed the Amended Summons for revocation of grant for further directions on the 15th July 2002. The Amended Summons is dated 12th June 2002.

When parties on both sides appeared before me for further directions on the 15th July 2002, Mr. G.E.O. Oluoch, Advocate for the Respondents/Administrators, raised a preliminary point of law stating that the Amended Summons for which further directions are sought to be given is, in itself, incompetent because it has no supporting affidavit and the Respondents/Administrators have not, therefore, been given the opportunity to reply to the purported amended summons.

Secondly, Mr. Oluoch said that the Applicant having failed to comply with a previous court order dated 13th November, 2001 and instead having come with a second application dated 26th March 2002 which was struck out on 28th May 2002 for being incompetent, the Applicant should have sought the extension of the court order dated 13th November 2001 before filing the Amended Summons dated 12th June 2002.

Mr. Mbugua did not agree saying that the summons dated 28th March 2000 sought to revoke a grant. The court directed the summons should be amended to revoke the certificate of confirmation and not the grant. The Objector filed the application dated 26th March 2002 for leave to amend the summons dated 28th March 2000. It was objected to and a ruling delivered that leave to amend had been given and that, therefore, the summons dated 26th March 2002 did not comply with the court order dated 13th November 2001 and it was struck out.

Mr. Mbugua, therefore, concluded that the summons dated 28th March 2000 and amended on 12th June 2002 is in compliance with the Court Order dated 13th November 2001 and is property before this

court for further directions. Mr. Mbugua said that there was no need to file another affidavit as the one filed in support of the summons dated 28th March 2000 was sufficient.

Mr. Mbugua did not address himself to the issue of the extension of the court order dated 13th November 2002 before filing the Amended Summons dated 12th June 2002. My views on this issue are that there needed be no order for the extension of that court order because the order did not set the time limit. The order merely adjourned directions of the summons dated 28th March 2000 generally for the said summons to be amended.

I should point out that the order dated 13th November 2001 was made because from the documents filed, the Objector is aggrieved with the distribution of the estate and not the granting of the grant of letters of administration as such. Parties should go straight to the issues in dispute instead of going into issues where there is no dispute as the court does not have all that time to indulge the parties. If the only complaint of the Objector is that an asset X which he feels should have been given to him was not given to him, it is a waste of the court's time for such an Objector to come to court asking for the revocation of the grant under which the distribution of the estate was done during the confirmation of the grant.

Such a person should either apply for rectification of the certificate of succession which distributed the estate or should file an appeal against the distribution if he contested that distribution during the proceedings for confirmation of grant. The Application for rectification of the certificate of confirmation of grant should be filed in the same succession cause in the same court which issued the certificate.

That is why on the 13th November 2001 it was felt that the Objector having come to this court praying for revocation of grant, should amend his summons dated 28th March 2000 to ask for a rectification of the certificate of confirmation instead of asking for the revocation of grant.

Having been given such an order on 13th November 2001, Mr. Mbugua come back with a fresh application dated 26th March 2002 praying for leave to amend the summons dated 28th March 2000. The application dated 26th March 2002 was of course unnecessary as the filing of the amended summons had already been permitted in the court order dated 13th November 2001. The application dated 26th March 2002 was, therefore, struck out for failure to comply with the court order dated 13th November 2001.

That has prompted Mr. Mbugua to come back again this time with the Amended Summons dated 12th July 2002 purporting to amend the summons dated 28th March 2000.

But Mr. Mbugua in doing so has run into three problems. Firstly, the head lines of the amended application still shows that it is a summons for revocation of grant under Section 76 of the Laws of Succession Act and Rule 44 of the Probate and Administration Rules. Of course the inclusion of Rule 73 creates no problem.

Secondly, the Applicant having decided to stick to the above mentioned provisions of law, in the amended prayer 1 (A) the Applicant wants revocation of the certificate of confirmation of grant.

Thirdly, the Applicant is purporting to effect the amendments allegedly pursuant to the leave I granted on 30th October 2001 yet there seems to be no such leave in this court case file.

Having done the above, therefore, the Applicant is relying on the same grounds he relied upon in support of the summons dated 28th March 2000. Good for Mr. Oluoch, those grounds are re-stated in the body of the Amended Summons dated 12th July 2002. But bad for Mr. Oluoch the Amended Summons dated 12th July 2002 has no supporting affidavit and Mr. Mbugua has told the court during his submissions in this preliminary hearing that the Amended Summons dated 12th July 2002 is supported by the affidavit sworn to support the summons dated 28th March 2000. I do not see how; since the summons dated 28th March 2000 is for the revocation of grant while the Amended Summons dated 12th July 2002 is for the revocation of the certificate of confirmation of grant.

To me, therefore, the objection raised by Mr. Oluoch has merits as the Respondents/Administrators

are not being given the opportunity to respond to the Objector's case as framed in the Amended summons dated 12th July 2002.

On the whole, therefore, and as it appears to me that this court's order dated 13th November, 2001 is putting the reluctant Objector and his reluctant advocate into problems which tend to complicate the case instead of simplifying the case as was intended, I do hereby uphold Mr. Oluoch's preliminary point and find the Amended Summons dated 12th July 2002 herein incompetent. The same be and is hereby struck out with costs of the said Amended summons to the Respondents/Administrators. It is also ordered that further directions be given on the basis of the Objector's Summons dated 28th March 2000 for revocation of grant and that a date to that effect be taken at the Registry.

The Orders in this Ruling supersede this court's order dated 13th November 2001 to allow Mr. Mburu Mbugua prosecute his client's case in the manner he originally intended.

Dated this 29th day of July 2002.

J.M. KHAMONI

JUDGE

Present:

Mr. Gachoka for Mr. Mburu Mbugua for the Applicant.