



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (MILIMANI LAW COURTS)
SUCCESSION CAUSE 2010 OF 95

IN THE MATTER OF THE ESTATE OF ELIZABETH WANJIRA
MUCHIRI (DECEASED)

R U L I N G

A grant of letters of Administration intestate, to the deceased's estate was issued to his "son" and "grandson", respectively on 9th October, 1995.

The information contained in form P&A 5, which supported the petition, described the petitioner as "son" of the deceased. The petitioner's son was described as the "grandson". Again in form P&A 80, the petitioner stated that he presented the petition as "son" of the deceased. One Gerald Njue Naftali, who described the deceased as her aunt, moved the court with "summons for Revocation or annulment of Grant".

The summons were dated 6th August, 1996, accompanied by his affidavit in which he averred inter alia, that,

"The petitioner is not related to the deceased in anyway at all and has no locus to bring the petition or any claim or interest in the estate of the deceased".

Describing his relationship with the deceased, the objector averred as follows in para 5 of the same affidavit, "That the deceased is a sister to my father, Naftali M'Muga and was childless and the petitioner is not a child of the deceased and his son Eliphias Miriti is not a grandson of the deceased. They are not our relatives at all, but were neighbours".

The petitioner filed a replying affidavit and averred inter alia at para 5, "That the deceased was biologically childless, but having taken care of her, she had in a Meru custom recognized and treated me as her son". Paragraph 8 of the same affidavit reads,

"That during her lifetime, the deceased received both material and moral support from Eliphias Miriti as a result of which she often declared that she would like the latter to inherit her estate....."

The petitioner also averred that the deceased's estate had been distributed and there was nothing left. The petitioner annexed to his affidavit minutes of what he referred to as a family meeting showing that it was

his family who buried the deceased etc etc.

From the proceedings on record, some of which I have reproduced, I find that there was misrepresentation by the petitioner at the time he petitioned for a grant of representation to the deceased's estate.

Knowing very well that neither himself nor his son were related to the deceased, he misled the court by endorsing in form P&A 5 (the affidavit in support of the petition) that he was a "son" of the deceased, and his son, a "grandson" of the deceased.

The further affidavit sworn by the same petitioner on 3rd May, 1996, is also misleading and untrue as he described himself as "the only son" of the deceased and his son, "the only grandson of the deceased".

The objector's counsel read the contents of Section 39 of the Succession Act, and submitted that his client, who was related to the deceased by being his nephew – i.e. (the deceased and the objector's father were brother and sister), had a better claim to her estate because he falls in the line of consanguinity in Section 39. Though counsel for the petitioner denied that his client committed any fraud, I find that the fraud on the part of the petitioner was his deliberate description as "the only son" of the deceased and his son "the only grandson" of the deceased, knowing very well that this was not so. This false information led the court to give the petitioner the Grant to the deceased's estate quite easily.

I noted with concern that the petitioner only disclosed the deceased was "childless and did not have any biological children"

in his reply to the summons for Revocation by the objector. I believe things would have been different if this disclosure was made at the beginning, when the petitioner was completing the relevant forms, whilst petitioning for the grant.

Though the petitioner's affidavit averred that the estate had been distributed, I find that the same was done without making a true disclosure and therefore irregularly and or fraudulently. I therefore proceed to REVOKE the grant of Letters of Administration issued to the petitioner herein. I have to state here that the Succession Act does not give a time limit within which a grant can be Revoked, Sec.76 of the Act lists the situations which give rise to Revocation of Grant. The circumstances of this Succession Cause fall within that list that is why I have proceeded to REVOKE the grant.

I now direct the deceased's family to decide on who should apply for the grant to the deceased's estate. Once a decision has been made, by the family and the name or names of the petitioners are agreed upon, they can seek a court order to have the grant reissued to them and the new petitioner or petitioners can then apply for Confirmation of the Grant, using form 108, the petition, and form 9, the affidavit. Paragraph 5 of form 9 requires the petitioners to give a list of assets of the deceased, and those beneficially entitled. Effectively, this is distribution of the estate, before confirmation of the grant. This is provided for in the proviso to Sec. 71 of the Succession Act, Cap. 160 Laws of Kenya. Dated at Nairobi this 11th day of December, 2002.

JOYCE ALUOCH

HIGH COURT JUDGE