In re estate of Peter Kamweri Kereme-deceased (Succession Cause 218 of 2000) [2023] KEHC 22539 (KLR) (25 September 2023) (Ruling)

Neutral citation: [2023] KEHC 22539 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT ELDORET

SUCCESSION CAUSE 218 OF 2000

RN NYAKUNDI, J

SEPTEMBER 25, 2023

BETWEEN

TERESIA WANJIKU ..... 1ST APPLICANT

SILVIA WANJIRU ..... 2ND APPLICANT

AND

FRANCIS KARANJA KAMIRI ..... 1ST PETITIONER

DANIEL NJEHIA KAMIRI ..... 2ND PETITIONER

RULING

1. The applicants approached this court vide a summons for revocation of grant dated August 11, 2021 seeking the following orders;

    1. That the grant of letters of administration intestate to Editar Wairimu Kamiri, Francis Karanja Kamiri, Joseph Muiru Kamiri and Daniel Njehia Kamiri.

    2. That costs be provided for.

    The application is premised on the grounds set out therein and the sworn affidavit of Teresia Wanjiku.

2. The applicant's case is that the grant of letters of administration was confirmed on June 26, 2003 and amended on July 28, 2003. Further, that the grant was confirmed with the exclusion of the beneficiaries to the estate and therefore in contravention of the law. They maintained that they were not given an opportunity to participate in the proceedings leading up to the confirmation or amendment of the grant. It is the applicants' case that at the time of confirmation, the mode of distribution was agreed between the administrators without their involvement despite being beneficiaries of the estate of the deceased.

3. The applicants sought to have the application allowed, urging that failure to seek the consent of the beneficiaries of the estate was fraudulent concealment in obtaining the grant.

Analysis & Determination

4. Whether the grant of letters of administration made on June 26, 2003 and amended on July 28, 2003 should be revoked

   Section 76 of the *Law of Succession Act* states as follows;

   > 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 the making of a false statement or by the concealment from the court of something material to the case;
   >
   > (c) that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently;
   >
   > (d) that the person to whom the grant was made has failed, after due notice and without reasonable cause either-
   >
   > (i) to apply for confirmation of the grant within one year from the date thereof, or such longer period as the court order or allow;
   >
   > or
   >
   > (ii) to proceed diligently with the administration of the estate; or
   >
   > (iii) to produce to the court, within the time prescribed, any such inventory or account of administration as is required by the provisions of paragraphs (e) and (g) of section 83 or has produced any such inventory or account which is false in any material particular; or
   >
   > (e) that the grant has become useless and inoperative through subsequent circumstances.

5. I have perused the record of the court and it is evident that the applicants consented to the first mode of distribution vide a consent letter dated January 15, 2003 which was adopted as an order of the court dated June 26, 2023. To that extent they were in agreement with the mode of distribution. The bone of contention is the amendment of the grant vide the consent letter dated July 14, 2003 which was adopted as an order of the court on July 28, 2003. This is what the applicants contend they did not consent to the distribution after the amendment. Upon perusal of the record, it is apparent that they did not append their signatures on the amended certificate of confirmation of grant. I have also noted that counsel for the applicant was on record for the 1st petitioner and not the applicants contrary to his statements in court on May 30, 2022. Counsel was on record for the applicants' mother and not her daughters.

6. Of emphasis is that the certificates of confirmation of grant that was obtained vide a consent order and therefor, in order to set the same aside, there are certain principles that must be adhered to. The Court

of Appeal has set out the conditions under which a consent order can be set aside in several cases. In the case of the *National Bank of Kenya versus Ndung'u Njau* (1997) eKLR the Court of Appeal held:-

> A review will be granted whenever the Court considers it is necessary to correct an error or omission on the part of the Court. The error or omission must be self-evident and should not require an elaborate argument to be established"

In *Purcell verses FC Trigell LTD* (1970) 3 ALL ER 671 Winn Lj Sand at 676

> It seems to me that, if a consent order is to be set aside, it can really only be set aside on grounds which would justify the setting aside of a contract entered into with knowledge of material matters by legally competent persons, and I see no suggestion here that any matters that occurred would justify the setting aside or rectification of this order looked at as a contract"

7. The applicants have not shown that they did not consent to the first certificate of confirmation of grant, in fact, the admit that they participated and agreed to the mode of distribution therein. However, it is evident that they did not consent to the to the amendment that resulted in the distribution of the additional properties that were discovered after the first consent, reason being the only signatures in the letter of consent are those of the firm M/s Chemitei & Co. Advocates for the 1st petitioner and M/s Nyairo & Company for the 2nd-4th respondents. the upshot of the foregoing is that, despite being involved in the first consented mode of distribution, they were excluded from the amendment that was effected after the discovery of the other properties.

8. Taking into consideration the age of the matter, and the fact that some of the administrators have since passed away, the court must consider the interests of justice in making its determination on revocation of the grant. To revoke the grant in its entirety would only serve to lengthen the cause which was instituted 23 years ago. Further, given that the initial consent order has not been shaken, the court has no power to interfere with it at this juncture.

9. The only dispute is as to the distribution of the newly discovered assets that were the subject of the amendment of the grant. To revoke the proceedings entirely and subject the estate to fresh proceedings would be to delay justice. Further, given that the same was by consent, I reiterate that the same cannot be set aside as the requisite conditions for setting aside a consent order have not been met. It is my considered view that it would be in the interest of justice that the parties be granted an opportunity to file their modes of distribution on the remaining portion of the estate within 14 days. To be precise, this is in reference to the unregistered plots at Langas and Racecourse as per the impugned certificate of confirmation of grant.

DELIVERED, DATED AND SIGNED AT ELDORET ON THIS 25TH DAY OF SEPTEMBER 2023

R. NYAKUNDI

JUDGE