



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MOMBASA

SUCCESSION CAUSE NO.566 OF 2007

IN THE MATTER OF THE ESTATE OF KARIMA AKASHA ABDALLA (DECEASED)

RULING

1. The late Karima Akasha Abdalla (herein the Deceased) died intestate on 8th February,2006 while domiciled in Sudan. She was survived by the following children;

Nurdin Akasha.....Son

Hassan Akasha.....Son

Atiyat AkashaDaughter

Nargis Akasha.....Son

2. The following assets were listed under form P&A 5 as comprising the estate;

Plot No. 6289/1/MN

Plot No. 6290/1/MN

3. On 17th October 2007, Nurdin Akasha petitioned this honourable court for grant of representation. Consequently, a grant of letters of administration intestate was issued on 21st May, 2008. The same was confirmed on 6th March, 2009 and the estate shared out with the sons getting each 2/6 and daughters each 1/6 share out of the estate. The grant was later on 11th October 2014 rectified to include property known as Mombasa/ block XIII/65 which had erroneously been left out. An amended certificate of confirmation of grant was issued on 7th November, 2014.

4. Subsequently, the applicants herein Hassan Akasha and Nargis Akasha moved this court vide an application dated 25th July,2021 seeking the following orders:

a) The honourable court be pleased to replace the administrator of the estate of Karima Akasha Abdalla from Nurdin Akasha to Nargis Akasha.

b) The costs of application be provided for.

5. The application is premised upon grounds set out on the face of it and averments contained in the affidavits of Nargis Akasha and Hassan Akasha sworn on 25th July, 2021. The 1st applicant's case is to the effect that since confirmation of the grant, Nargis Akasha Nurdin Akasha the respondent herein has neither been accountable nor filed any record of accounts for purposes of the administration of the estate.

6. It was further stated that the administrator has been making decisions affecting the affairs of the estate without other beneficiaries' participation. That the administrator filed **MOMBASA ELC CASE NO.94 OF 2021** between Nurdin Abdalla Akasha (suing as administrator of the estate of Karima Akasha Abdalla)-v – Fahad Haji Mansur Abeid & Anor without consulting other beneficiaries of the estate who are totally opposed to the institution of the case.

7. The 2nd applicant reiterated the averments /content contained in the affidavit of the 1st applicant in support of the application. He also filed a supplementary affidavit sworn on 9th November, 2021 wherein he stated that one of the main contentious issues in this case is Plot No.Mombasa /Block XIII/65 which is not a free property of the estate of Karima Akasha Abdalla a fact well known to the respondent Nurdin Akasha and every member of the family. That he is the one who bought the property but registered it in his late mother's name to hold in trust.

8. The respondent in response filed a replying affidavit on 9th August 2021 and a further replying affidavit sworn on 18th October 2021. It was his contention that he has properly carried out his duties by having the assets of the deceased's estate transferred to each of the beneficiaries as per the confirmed grant. He annexed a certificate of title for Plot No.6289/1/MN and 6290/1/MN registered in the name of Nargis Akasha Abdalla as trustee of;

Karima Akasha Abdalla

Kamaludin Akasha Abdalla

Nuridin Akasha Abdalla

Atiyat Akasha Abdalla and

Hassan Akasha Abdalla

9. He further stated that Plot No.Mombasa/Block XIII/65 previously registered in the name of Nuridin Akasha Abdalla and Hassan Akasha Abdalla was sold to one Fahad Haji Mansula Abed and Swabri Salim Jamaan. That each beneficiary has his or her distinct share in the parcels of land known as Plot No.6289/1/MN and Plot No.6290/1/MN.

10. The respondent filed a 2nd further affidavit stating that they have been unable complete administration of the estate due to the fact that the 1st applicant has refused to hand over the original title which is the subject of ELC CASE NO.94 of 2021.

11. During the hearing, parties agreed to canvass the matter through oral submissions.

12. Ms Oseko Counsel holding brief for Ms Muthoni for the applicants told the court that they were relying on the application, supporting affidavit and supplementary documents. Equally, Mr Obara Counsel for the respondent told the court that he was relying on the replying affidavit, further affidavit, and the documents attached thereof.

13. I have considered the application herein, affidavits in support and the response thereto. The only issue that emerge for determination is whether the administrator should be substituted.

14. The applicants herein moved this court seeking to remove and replace Nuridin Akasha the administrator herein with Nargis Akasha on three grounds; Firstly, he has not been accountable to other administrators; Secondly, he has never filed any record of accounts in relation to the administration of the estate of the deceased; Thirdly, he has been making decisions on the administration of the estate to the exclusion of the other beneficiaries.

15. It is not in dispute that the parties herein are all beneficiaries of the estate of the deceased. The two applicants have accused the administrator of filing ELC CASE NO.94 OF 2021 without consulting them. The administrator has attached several documents which include: - copies of certificate of title for two parcels of land namely Plot No. 6289/1/MN and 6290/1/MN which indicate that the said properties are registered in the name of Nargis Akasha as a trustee of all the beneficiaries; certificate of lease and sale agreement for Plot No.Mombasa/Block XIII/65 and proceedings of ELC CASE NO.94 OF 2021.The applicants have disputed or rebutted the administrators position. It is however not clear whether the environment and land matter has been heard and determined.

16. After evaluating the grounds upon which the application is filed am persuaded to believe that those grounds squarely fall under the provisions of Section 76 of the law of succession which governs applications for revocation of a grant. Section 76 of the Law of Succession Act provides;

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)

b)

c)

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 ordered/or allowed; 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;

17. Under Section 76, it is clear that whenever a party is aggrieved or faced with circumstances such as cited in this application, the only recourse a party has is to apply for revocation of the grant and not substitution of an administrator. It is trite that under the law of succession there is no express provision for substitution of an administrator. In that regard, I am guided by the holding in the case of **In re Estate of Chemwok Chemitei (Deceased) [2021] eKLR** where the court quoted the case of **Florence Okutu Nandwa & Another vs. John Atemba Kojwa, Kisumu Civil Appeal No. 306 of 1998**, where it was held that :

“A grant of representation is made in *personam*. It is specific to the person appointed. It is not transferable to another person. It cannot therefore be transferred from one person to another. The issue of substitution of an administrator with another person should not arise. Where the holder of a grant dies, the grant made to him becomes useless and inoperative, and the grant exists for the purpose only of being revoked. Such grant is revocable under section 76 of the Law of Succession Act. Upon its revocation, a fresh application for grant should be made in the usual way, following procedures laid down in the Law of Succession Act and the Probate and Administration (Rules)...”

18. Similar position was in the case of **In re Estate of John Chege Nduati (Deceased) [2021] eKLR** where the court held that ;

“In order to remove and substitute the name of an Administrator it is required that the Confirmed Grant be revoked in line with Section 76, Law of Succession Act and a fresh Grant be issued in the name of a different party.”

19. In this case the grant confirmed on 7th November 2014 has not been revoked thus Nurdin Akasha remains the administrator of the estate of the late Karima Akasha. If the applicants wish to have him removed as an administrator, then they should follow the right procedure.

20. The upshot of the above is that the application lacks merit and it is hereby dismissed with no orders to costs.

DATED, SIGNED AND DELIVERED IN MOMBASA THIS 15TH DAY OF FEBRUARY 2022

J.N.ONYIEGO

JUDGE