



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT EMBU

SUCCESSION CAUSE NO. 174 OF 2011

IN THE MATTER OF ESTATE OF CHIRIGU KANGERUE Alias CIRIGU KANGERUE (DECEASED)

SAMUEL NYAGA.....APPLICANT

VERSUS

IRERI CIRIGU.....RESPONDENT

RULING

A. Introduction

1. Before this court is summons dated 9/07/2020 seeking for orders that this court do recall and revoke the grant issued and confirmed to the respondent on 13/07/2019; that a fresh grant be issued to the applicant herein to enable the finalization of the administration of the estate; and for the costs of the application. The grounds in support of the application as they appear on the face of the summons and from the affidavit in support of the said summons are that the respondent herein to whom the grant was issued and confirmed has after due notice, and without reasonable cause failed to transfer land parcel No. Ngandori/Ngovio/93 to the applicant despite the applicant having requested the respondent to sign all the relevant documents to enable the transfer.

2. The application is unopposed despite there being evidence of service.

3. I have perused the court record and I note that grant of letters of administration intestate was granted to the respondent herein on 17/01/2012 and confirmed vide the orders of 23/4/2014. The same was rectified vide the orders of 18/04/2016 and wherein the applicant was given the whole of LR. Ngandori/Ngovio/93 and a further rectification made on 10/07/2019 vide the orders of the said date by F. Muchemi, J.

4. The application herein is for revocation of the said grant and wherein the applicant further prays for orders that a fresh grant be issued in his name to enable administration of the estate. The circumstances under which a grant of representation may be revoked are provided for under section 76 (a)- (e) of the Law of Succession Act. However, from the application herein, it appears that the same ought to be determined *vis a viz* the provision of section 76(d)(ii) which allows this court to revoke a grant *where the person to whom the grant was made has failed, after due notice and without reasonable cause to proceed diligently with the administration of the estate.* It appears that the administrator has failed to proceed diligently with the administration of the estate.

5. However, in my view, for a court to revoke a grant under this section, there must be evidence that the applicant has given due notice to the administrator to apply for confirmation of grant and the said failure to apply for confirmation must be without reasonable cause. Further, from the plain reading of the above provision, it is clear that an application for revocation of grant on the ground under section 76(d)(ii) can only be made if the administrator has failed to administer the estate within one year. As such, a period of one year must have lapsed before an application for revocation of grant under section 76(d)(ii) can be filed.

6. In the instant case, the grant was made on 17/01/2012 and the respondent herein applied for confirmation of the same vide summons dated 24/1/2012 and filed in court on the same day. As such, it is clear that the respondent herein proceeded to have the grant confirmed within the statutory time frame provided by law. I note that this court has jurisdiction to revoke a grant *suo moto* where it is shown that the conditions under Section 76 of the Act are present. I have perused the court record herein and I don't see any malpractice on the part of the administrator in acquiring the grant so as to enable this court to invoke its jurisdiction to revoke the grant *suo moto*. As such, the applicant has not made a case for revocation of grant herein.

7. However, and the above notwithstanding, I note that after the respondent herein filed summons for confirmation of grant, one of the beneficiaries of the estate (Caterina Ciumwari) filed an affidavit of protest and after hearing of the said protest, the court confirmed the grant and ordered that the suit land herein be shared between the applicant and the protestor in the protest.

8. The applicant was to get ½ share and the protestor the other half to hold in trust for the children of their deceased brother one John Nthiga Chirigu. The said certificate of confirmation of grant was rectified and the protestor ceded the ½ share to the applicant herein. I note that the respondent was provided for as he was given LR. Ngandori/Kibugu/T.123. As such, he has no interest on the suit land and none has been brought to the attention of this court. The said administrator having been bestowed the sole duty of distributing the estate of the deceased to the beneficiaries has a legal duty, in execution of his fiduciary duties under Section 83; **to distribute or to retain on trust (as the case may require) all assets remaining after payment of expenses and debts as provided by the preceding paragraphs of this section and the income therefrom, according to the respective beneficial interests therein under the will or on intestacy, as the case may be {section 83 (f)}; within six months from the date of confirmation of the grant, or such longer period as the court may allow, to complete the administration of the estate in respect of all matters other than continuing trusts, and to produce to the court a full and accurate account of the completed administration; {Section 83 (g)}; and to complete the administration of the estate in respect of all matters other than continuing trusts and if required by the court, either of its own motion or on the application of any interested party in the estate, to produce to the court a full and accurate account of the completed administration {section 83 (i)}. Failure to do so amounts to a breach of his fiduciary duties.**

9. What is before this court is a dispute between the administrator and a beneficiary of the estate and wherein he has refused to sign the transmission forms. These depositions have not been controverted. It is clear therefore that the respondent herein is in breach of his duties and this court should not leave that to continue. This court is bestowed with powers under Section 47 of the Law of Succession Act to entertain any application and determine any dispute under the Act and to pronounce such decrees and make such orders therein as may be expedient. Further, *Rule 73 of Probate and Administration Rules* preserve the inherent jurisdiction of this court while dealing with matters succession. *The duties of this court as envisaged in the Law of Succession Act are to help the beneficiaries get shares the estate. Where there is any impediment to the administration thereof, this court is allowed to invoke its inherent powers to make the ends of justice meet.*

10. In the instant case, the administrator of the estate has frustrated the beneficiary in getting his share of the estate of his deceased father and the same is without any justification. In the premises, this court ought to come to the rescue of the said beneficiary and make any order as may be expedient.

11. It is clear that the only property which the applicant has interest in, is the suit property. This court has the duty to administer justice without undue delay and observing the overriding principles. The applicant has prayed for orders that the grant be revoked and he be the administrator so as to enable finalize the administration of the estate. However, as I have already noted elsewhere, there exist no circumstances as envisaged under section 76 of the Law of Succession Act which can make this court revoke the grant herein. But nonetheless, it is clear that unless this court intervenes, the applicant herein will never have his share of the estate transferred to him.

12. *The office of the administrator of estate of a deceased person is an office which is built on the foundation of trust and goodwill. Where such is seen to be lacking, then the court ought to invoke its powers to ensure that justice is done to the beneficiaries more so where the administrator puts the beneficiaries in an unenviable position. In the instant case, the administrator having failed to distribute the estate and with no valid reason, an order ought to and is hereby issued to the Deputy Registrar of this court directing her to sign all the relevant documents to effect the transfer of the suit property to the applicant.*

13. This being a succession cause and which involves family members, each of the parties should their own costs.

14. It is so ordered.

Delivered, dated and signed at Embu this 3rd day of March, 2021.

L. NJUGUNA

JUDGE

.....for Applicant

.....for Respondent