



REPUBLIC OF KENYA

IN THE HIGH COURT AT MALINDI

MISC. APPLICATION NO E12 OF 2021

KAJOJO ALI GONA.....APPLICANT

VERSUS

CHARO M'MBINDO JEFWA.....RESPONDENT

Coram: J. Nyakundi, J

Dennis Kinaro & Co Advocates for the Applicant

RULING

The applicant brought the present Summons in the matter of the Estate of **Ali Hassan Gona** for revocation and annulment of Letters of Administration made on 15.9.2009 in favor of **Charo N'Mbindo Jefwa**. The applicant has approached the Court in his capacity as a son to the deceased.

The applicant's Case

From the averments in the affidavit, it is alleged that the deceased died on 25.6.1984 as a result of poor health. As at the time of the deceased death he was in a monogamous marriage with one **Mwanajuma Gona** also deceased. In the course of and subsistence of the marriage the couple were blessed with two children namely; **Fatuma Ali Hassan** and **Kajoto Ali Gona**. This is supported by the Chief's letter dated 13.7.2020. The applicant further deposes that the deceased left behind Land Parcel title Number **Kilifi/Roka/285** measuring 12 acres. It is the applicant's case that the deceased died intestate and without any colour of right the respondent **Charo Jefwa** applied for grant of Letters of Administration vide **Kilifi SRM Succession Cause No. 15 of 2008** which was duly confirmed on **6.10.2009** as stipulated in the attached copy hereof marked **KAG - 6** and **KAG -7**. It is also the applicant's case that following confirmation hearings subsequently the respondent was issued with a confirmed grant, as the administrator of the estate. It is alleged that the respondent wholly transferred the parcel of land for his own benefit and therefore disinheriting the rightful heirs. The respondent was served with the suit papers but failed to file any defence to the application. Therefore, the matter proceeded as undefended cause.

Determination

Whether there exists just cause for the revocation and or annulment of the grant of Letter issued to the respondent on 15.4.2009. The operative Law is to be found under Section 76 of the Law of Succession Act which provides intestate grant of Letters of Administration may at any time be revoked or annulled if the proceedings thereto to obtain the grant are proved to be defective in substance, it was obtained fraudulently by making false statement or concealment of material factor to the petitioner for grant of Letters of Administration.

Further, if the application to obtain the grant of Letters of Administration made untrue allegation to justify the making of the grant by the court. Faced with this legal provisions and facts of the case, courts have significantly addressed such issues in the following manner. In **the death of the estate James Kiarie Muiruri (Deceased) Nairobi Succession Cause Number 2413 of 2003**.

“The applicants who were dissatisfied with the making of the grant to the respondent filed an application for revocation on grounds that it had been obtained without first obtaining the consent of the beneficiaries. The court found it was irregular to have obtained the grant without the consent, as a result an order for its revocation was issued. (See also *Matheka and another v Matheka* (2009) 1 E.A 257).”

I have given due consideration to the Evidence by the applicant as corroborated by the Chief's letter and the record in succession cause No. 15 of 2008 at Kilifi Senior Resident Magistrate Court. It is clear from the record that the respondent purporting to be the bona-fide purchaser for value petitioned for grant of Letters of Administration in the whole of the intestate estate of the deceased. The main complaint is that when the respondent proceeded to apply for the making of the grant intestate he never sought consent from the surviving children of the deceased. That claim is supported by another letter stated to have been written by the Location Chief acknowledging the respondent as a purchaser of part of the estate of the deceased. In Law any averment on oath which is not rebutted nor denied is admitted as true fact to prove

existence of a fact in issue as provided for under Section 107 (1) of the Evidence Act. It seems to the court that the applicant concealed a material factor on dependency under Section 29 of the Act to the court. It follows that the Probate Court acted on misrepresentation of facts and non-disclosure of material facts in the process of making of the grant which was subsequently confirmed in favor of the respondent. It was incumbent upon the respondent to name all the surviving children of the deceased and of course the Law enjoins him to seek their consent in regard to administration of the estate and residual distribution.

Giving due consideration to the facts and the Law under Section 76 of the Act, it's not in dispute that the respondent obtained the grant by making false statement to the estate of **Ali Hassan Gona**. There is also evidence that the respondent has filed neither the Probate account as provided for under **Section 83 (1) (G)** of the Law of Succession Act to render a true account of the estate.

In view of the uncontroverted evidence the grant of letters made on 15.4.209 and confirmed on 6.10.2009 to the respondent and all consequential orders and transactions remain tainted with irregularity. As the procedure to obtain the grant of letters of administration was essentially defective any claim of right of interest by the respondent done pursuant to the aforesaid grant was in breach of **Section 76** of the Act. The upshot, of all that there exists sufficient grounds for the revocation and annulment of the grant of Letters of Administration to the estate of **Ali Hassan Gona**. Therefore, all the purported transfer of land Parcel **Number Kilifi/Roka 285** to the respondent remain *void ab initio*.

A Declaration therefore is hereby issued concerning any such certificate of title registered in the name of the respondent and in order to preserve the subject matter of the Estate a permanent injunction restraining the respondent from intermeddling with the Estate of the deceased **Ali Hassan Gona** in effect do issue pending the hearing and determination of the administration of the estate. Accordingly, under **Section 66** of the Law of Succession Act, the applicant is granted leave of the court to petition for grant of Letters of Administration to the estate of **Ali Hassan Gona**. Costs of the application be in the cause.

It is so ordered.

DATED, SIGNED AND DELIVERED AT MALINDI THIS 8TH DAY OF MARCH, 2021.

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R. NYAKUNDI

JUDGE

This Ruling has been dispatched electronically to the respective emails of the advocates in the matter

(dennis.kinaro.dk@gmail.com and khaminwamalindi@yayoo.com)