



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

SUCCESSION APPEAL NO. 44 OF 1989

IN THE MATTER OF THE ESTATE OF THE LATE WANG'ONDU MURIITHI WARUTA (DECEASED)

BENEDICT MURIITHI WANG'ONDU.....APPLICANT

VERSUS

BEATRICE WAMBUI WACHIRA.....RESPONDENT

RULING

Background facts

1. This is a ruling on the application dated 28th February 2020 seeking for revocation of grant in favour of the applicant.
2. The deceased in this case died in 1988 and the applicant filed this cause in 1989 describing himself as the sole survivor and son of the deceased. An objection to making of the grant and cross-petition was filed by one Moses Kimunya a paternal cousin of the deceased claiming that several assets of the deceased were held in trust for him by the deceased.
3. A second objector one Peninah Wangechi Wang' Ondu a daughter of the deceased filed a second objection and cross petition in the same year 1989.
4. The petitions were heard and determined through arbitration of Moses Kimunya being dismissed. That of Peninah Wangechi was successful and in a preliminary decree dated 8th April 1997, the court shared out all the known assets of the deceased between Benedict Muriithi and Peninah Wangechi in equal shares. The grant was confirmed on 22/11/1996 in favour of the two administrators.
5. Peninah died on the 3rd December 1997 following which the applicant herein Benedict Muriithi Wang' Ondu filed an application dated 27/04/2004 seeking to include some properties of the deceased left out in the proceedings and to be registered in his name. This application was later withdrawn on 09/05/1997.
6. The respondent herein sought to be appointed an administrator to be substituted in place of Peninah Wangechi. Her application dated 14/06/2017 was allowed by the court on 27/06/2018. An amended grant of confirmation dated 26/07/2017 was issued consisting of all the properties of the deceased that were to be shared equally between Benedict Muriithi and Peninah Wangechi though she was deceased. This raised eye brows on how it happened and on how the grant was expected to be implemented with a deceased person as a beneficiary. The name of Beatrice Wambui Wachira the respondent having been substituted in place of Peninah did not feature in the grant as a beneficiary.
7. It is not clear how the name of the applicant who was a co-administrator with Peninah was removed and Beatrice's name inserted as the sole administrator. The current application dated 28/02/2020 brought by Benedict Muriithi the applicant herein seeks to revoke the rectified/amended grant dated 26/07/2017 in which his name was omitted as a beneficiary.
8. The applicant states that the rectification of grant was mischievously done without his knowledge, that the respondent is a stranger to the estate and that the grant has been rendered inoperative and useless due to the actions of the respondent.
9. The respondent opposes the application on grounds that she is the only child of Peninah and is entitled to be bequeathed the shares of her deceased mother. It is further argued that the proceedings to rectify the grant were procedurally correct and that there was no fraud or concealment of facts material to the case so as to justify revocation of grant under Section 76 of the Act.
10. The respondent states that before her demise, Peninah wrote a will and appointed two executors who include herself with one David Maina. The respondent states that the applicant is an intruder in the estate of Peninah. He has his half share of the entire estate of the deceased in this case and ought to follow up on what he is entitled to.

11. The issues for determination herein is whether the grant ought to be revoked for having been rendered inoperative and useless.
12. I have perused the submissions of the parties in support of their arguments which I have taken into consideration in my ruling.
13. The applicable law in this application is Section 76 and Section 74 of the Act whose provisions will be examined herein.

Section 74 provides for rectification of grant. It provides:-

“Errors in names and descriptions, or in setting out the time and place of the deceased’s death, or the purpose in a limited grant, may be rectified by the court, and the grant of representation, whether before or after confirmation, may be altered and amended accordingly.”

14. I begin with the rectification done by the applicant through his application dated 22/05/2018 in which he added two properties of the deceased. This application though allowed by the court was irregular in that it purported to give the two properties being shares in Barclays bank Limited to only one beneficiary the applicant. This act of the applicant went against the spirit of the main grant which had distributed the estate in two equal shares between the deceased Peninah Wangeci and the applicant Benedict Muriithi.

15. In my view, the applicant ought to have approached the court with at least one of the personal representatives of Peninah Wangeci to review the grant and have the properties shared equally between them. I stress the word review because under Section 74 of the Act it is only mistakes of names of deceased and beneficiaries and mistakes on description of properties that can be rectified. The provisions of the section do not give any person the authority to take a share of whom another beneficiary is entitled and to give it either to himself or to another person.

16. Bearing in mind that the applicant did not follow the law in the so called rectification, the orders given on 15/10/2018 are in law null and void.

17. Section 76 provides for several grounds for revocation of grant which includes 76(e) which provides:-

“that the grant has become useless and in operative through subsequent circumstances.”

18. As I have explained earlier; the grant confirmed in favour of the respondent herein is also against the spirit of the grant confirmed on 22/11/1996 in favour of the respondent and Peninah Wangeci to share the properties equally in that it completely removed the applicant without any orders of the court. The respondent herein though represented by a counsel applied the law of the jungle in the process. The applicant came to learn of the move much later and filed this application.

19. The grant purportedly confirmed in favour of the respondent is contrary to the law and the spirit of the Constitution. In my considered view the grant has been rendered useless and inoperative as provided for by Section 76 of the Act.

20. Section 73 of the Probate and Administration rules empowers this court to make any orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.

21. It is my finding that the application dated 28/02/2020 is merited and is hereby allowed in the following terms:-

- a) That the orders for rectification made on 15/10/2018 in favour of the applicant Benedict Muriithi are hereby declared null and void.
- b) That the grant on record purported to have been issued or confirmed on 22/07/2017 is hereby declared null and void.
- c) That the respondent Beatrice Wambui Wachira substituted in place of Peninah Wangeci is hereby appointed as co-administrator of the estate to join the applicant Benedict Muriithi Wang’ondou.
- d) That a fresh grant to issue in the names of the two co-administrators.
- e) That the two administrators or any of them do file an application for review of grant to include any assets of the deceased left out in the grant within thirty(30) days.
- f) That each party do meet their own costs.

It is hereby so ordered.

DELIVERED, DATED AND SIGNED AT NYERI THIS 17TH DAY OF JUNE 2021.

F. MUCHEMI

JUDGE

Ruling delivered through video link this 17th day of June 2021