



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAKURU**

**SUCCESSION CAUSE NO.499 OF 2007**

**IN THE MATTER OF THE ESTATE OF JANET WAMBUI KIARIE (DECEASED)**

**SAMUEL MBOCHI KIARIE**

**MARTHA NJERI MWANGI**

**WILLY MAINA KIARIE**

**MARY NJAMBI GITAU.....APPLICANTS**

**VERSUS**

**ISAAC KABAYA KIARIE.....RESPONDENT**

**RULING**

1. The Respondent **Isaac Kabaya Kiarie** filed an application for grant of letters of administration intestate of the estate of the deceased on 9<sup>th</sup> July 2007. Letters of administration were issued on 23<sup>rd</sup> October 2007, and a certificate of confirmation of grant was issued on 27<sup>th</sup> July 2017. **Isaac Kabaya Kiarie** was appointed as the administrator to the estate of the deceased.

2. On 1<sup>st</sup> of August 2018, **Isaac Kabaya Kiarie** filed a summons application seeking to have the Land Registrar dispense with signatures, passport-sized photographs, copies of identity cards, and pin certificates of the other beneficiaries of the estate of the deceased as well as dispense with the production of the original title documents held with the applicants.

3. The court in its ruling directed that the administrator do appoint a surveyor and the survey work be undertaken within 60 days and all beneficiaries to ensure the smooth process without any obstruction. Instead of the parties complying with the said orders, the applicants filed the current application seeking the following orders;

- i. That the grant of letters of administration intestate issued to ISAAC KABAYA KIARIE on the 23<sup>rd</sup> October 2007 be revoked.**
- ii. That fresh letters of administration intestate be issued to MARY NJAMBI GITAU and WILLY MAINA KIARIE.**
- iii. That an amended certificate of confirmation of grant be issued to reflect the new administrator.**

4. The application is supported by the annexed affidavit sworn jointly by the applicants. The applicants aver that the respondent has failed to take the requisite step to ensure that the estate of the deceased is transmitted to the beneficiaries, and more so by failing to sign the instruction note to instruct the surveyor to prepare mutations and failing also to sign the application for the land control board consent for subdivision.

5. The respondent opposed the application through replying affidavit sworn on 30<sup>th</sup> January 2021. He averred that his efforts to administer the estate of the deceased have been thwarted by the applicants who have refused to submit the original documents of the estate of the deceased for the subdivision exercise.

6. Th respondent/Administrator further averred that the applicants been sending insults and death threats to him causing him to fear for his life. He averred that he has diligently administered the estate of the deceased since he was appointed the administrator but the applicants have been hostile to him, uncooperative and have refused to reimburse him the expenses spent in administering the estate of the deceased.

7. The respondent further stated that plot Menengai No. 4164 has already been subdivided without his knowledge and they are in the process of selling Kaguthi/425 and he is afraid that if the application is allowed, the applicants will disinherit him and averred that the issues herein

can be solved amicably if the applicants avail the original title documents to him.

8. This application proceeded by way of written submissions.

### **APPLICANTS' SUBMISSION**

9. Applicants submitted that the respondent has failed to diligently discharge his duties for 2 years from the 27<sup>th</sup> of July 2017 when the grant was issued to the time of applying, the administrator has failed to comply with the legal requirement of administering the estate within 6 months.

### **RESPONDENT'S SUBMISSION**

10. The respondent submitted that the current application for the revocation of the grant is unwarranted as the allegations do not fall under the preview of **section 76 of the Law of Succession Act**. He stated that the applicants should cooperate with the respondent in the administration of the estate of the deceased by availing the title documents rather than rushing to court to apply for revocation of the grant. He cited the case of the **estate of the late Suleman Kusundwa (1965) 1 EA 247**, and urged the court to find that the summons for revocation is baseless and dismiss the same.

### **ANALYSIS AND DETERMINATION**

11. The application herein is premised on **section 76 of the Law of Succession Act, Cap 160, Laws of Kenya** which provide 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.”*

12. A party seeking the revocation or annulment of a grant must demonstrate the existence of any, some, or all of the grounds set out in **Section 76** as outlined above.

13. The applicants are seeking to revoke the grant issued to **Isaac Kabaya** on 23<sup>rd</sup> October 2007 and the same be issued to **Mary Njambi Gitau** and **Willy Maina Kiarie**; the reason given is that, the administrator/respondent has refused to sign the land control board consent forms for subdivision of the estate, as well as failure to instruct the surveyor to conduct the survey work. They allege failure to perform duties expected of an administrator of the estate.

14. On the other hand, the administrator alleges performance of his duties is being hindered by the applicants who are the holders of the original title documents of the properties of the estate of the deceased and threats on him issued by the applicants herein.

15. According to the administrator, he cannot perform any function without the original title documents to enable him sign the requisite documents for the subdivision. He averred that the applicants are frustrating his efforts in the administration of the estate of the deceased by holding the original title document.

16. Orders were issued by **Justice Ndungu** on 6<sup>th</sup> May 2019 directing parties herein to facilitate the process of appointment of a surveyor and the survey works done without any obstruction of either party. My reading of the order is that the administrator was required to appoint a surveyor who was to carry out the subdivision work and the parties were to submit any document required to effect the sub-division.

17. From the averments it is clear that applicants failed to honor **Justice Ndungu's** order and have continued to hold the title documents

without submitting them to the surveyor for the surveyor to carry out survey and now want to fault the administrator for non-performance of his duties yet they have frustrated him in carrying out his duties.

18. There is no doubt that applicants have come to court with unclean hands and expect the court to grant the orders they are seeking. Whoever comes to court is expected to come with clean hands. This matter has been pending since the year 2007. The applicants do not deserve orders sought and should instead cooperate with the administrator in ensuring the process of distribution the estate of the deceased is brought to a close.

**19. FINAL ORDERS**

- 1) Application for revocation of grant is hereby dismissed**
- 2) The applicants to comply with order issued by Justice Ndungu on 6<sup>th</sup> May 2019.**
- 3) All the parties herein to work together to ensure completion of the distribution of the estate of the deceased.**
- 4) Each party to bear own costs.**

**RULING DATED, SIGNED AND DELIVERED VIA ZOOM AT NAKURU THIS 22ND DAY OF JULY, 2021**

.....

**RACHEL NGETICH**

**JUDGE**

**In the presence of:**

Schola - Court Assistant

Mr. Mutonyi Mbiyu for Applicants

Mr. Njoroge for Respondent