



**REPUBLIC OF KENYA**

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

**SUCCESSION CAUSE NO. 460 OF 2011**

**IN THE MATTER OF THE ESTATE OF JAPHET MWARANIA**

**M'ARIMI Alias JAPHET MWARANIA Alias JAPHET M'ARIMI (DECEASED)**

**FLORENCE KARAMBU MWARANIA.....OBJECTOR/APPLICANT**

**VERSUS**

**JOSECK MUTHURI MWARANIA.....1<sup>ST</sup> PETITIONER**

**JADIAH MURUNGI MWARANIA.....2<sup>ND</sup> PETITIONER**

**RULING**

1. By Summons dated 1/10/2019 brought under sections 47 & 76 of the Law of Succession Act, Rules 26, 27, 44, 49 & 73 of the Probate and Administration Rules together with Section 68 of the Land Registration Act, the applicant seeks the revocation of the grant issued to the petitioners and confirmed on 21/8/2017 as well as an order for leave to the applicant to file objection out of time.
2. The application is grounded on the allegation that applicant's consent was not sought prior to the commencement of these proceedings, thereby completely disinheriting her as a widow of one of the sons of the deceased. The applicant, in her supporting affidavit accuses the petitioners of having filed this cause secretly without her involvement, which resulted to the deceased estate being distributed in an inequitable manner. He denied any participation in the cause save for the 21/8/2017 when he attended court upon a tipoff by one of the daughters of the deceased and that in court, she raised her hands, lodged her protestations which resulted in her son, Mwarania Mwendah Eric Leon being included in the sharing of the estate, but dispute such a concession the same was never put in the certificate of confirmation of grant.
3. The affidavit in Support adds that when not given the agreed share her son, Eric Leon filed an application for rectification of the grant but the same was never heard despite numerous court attendances till the court directed her to file an appropriate application, which direction she complied with by the current application. She faults the distribution for having been distorted by inclusion of grandchildren, in a way as if it was a favour to the beneficiaries, peculiarly by designation of some assets as plots and by the administrator taking the lions share for himself thus affronting the spirit of section 35 of the Act that the children get equal shares.
- 4 In opposition to the application, the respondents swore three affidavits on 26/11/2019 and 12/7/2019 in which the court is urged to uphold the certificate of confirmation of grant as issued on 21/ 8/2017 and to dismiss the application for reasons among others that; the applicant stands in no equal or superior priority to the administrators to be entitled to give consent, that she was involved and attended family meetings, at one of which she introduced a step son, and court session where the estates distribution was discussed and made and that her rights would be best served by an application for provision and proposing how to distribute the estate and not annulment of grant. Joseck Muthuri Mwarania, the administrator, disputed the allegations that grandchildren had been given shares in distortion of the scheme of distribution by asserting that only those whose parents had died got the shares of such deceased parents and further that the applicant cannot be trusted as an administrator because when given a chance to administer her own husband's estate, she wholly disinherited her step son, Robert Koome. He then denied having taken the lion's share and set out how the entire estate was distributed and termed the application belated for failure to comply with the timelines set by the court on the 9/10/2018.
5. The court on 6/01/2020 gave timelines within which to file and exchange the respective parties' submissions which applicant filed on the 05/10/2020 the administrator on the 02/11/2020 and the 2<sup>nd</sup> respondent on the 15/02/2021.
6. The 2<sup>nd</sup> respondent while opposing the application identified the applicant as a step mother who as the administrator of the father's estate disinherited him by failure to give him any share out of his deceased father's (the applicant's husband) estate. He therefore urged the court to adopt his proposed mode of distribution. Those sentiments were echoed by the 1<sup>st</sup> respondent in his submissions filed on 2/11/2020. The highlight of those submissions is that there was never concealment of any material facts, that no stranger to the estate benefited and lastly that the objector stands no higher or *pari pasu* priority with the administrator and was thus not entitled to be asked and to give consent.

7. I have read and given due consideration to the affidavits filed, the previous proceedings taken in the file and the submissions filed by the three parties on the application. The outstanding issue for determination is whether the grant should be revoked on the grounds advanced and the ancillary question of whether the certificate of confirmation of grant deserves rectification as proposed by the administrator and 2<sup>nd</sup> respondent, Mr Robert Koome.

8. Section 76 of the Law of Succession Act sets out the requirements for revocation or annulment of grant to be available at anytime, before or after confirmation, **either on application by any interested, or on court's own motion where it is demonstrated that; the proceedings to obtain the grant were defective in substance; 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; 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; that the person to whom the grant was made has failed, after due notice and without reasonable cause 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 to proceed diligently with the administration of the estate; or 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 that the grant has become useless and inoperative through subsequent circumstances.**

9. The only reasons the applicant wants the grant revoked or annulled is that these proceedings were commenced secretly without her involvement, and that the distribution was skewed and unequal in that strangers were made to benefit. The reading of all materials availed demonstrate that not to be the accurate account of events. The available documents show that the applicant was indeed consulted, attended family meetings and a court session where the distribution was discussed and ordered. Had in fact appended her signature on the affidavit in support of the petition for letters of administration, lodged in court on 25/8/2011. She was therefore fully aware of these proceedings. For that, the petitioner deserves commendation for transparency and consultative approach to family disputes. It is appreciated that even though the applicant was ranked in a lower priority to the administrator, she was recognized, being a widow to a dependent.

10. On the allegations of grandchildren and or strangers benefitted from the distribution thus distorting same, I find the explanation by the administrator to be not only plausible but also the just thing to have been done. I find that the grandchildren did not inherit on own rights but on account of their parents as children of the deceased beneficiaries to the estate. I equally find that the fact that the estate was not distributed with mathematical equality does not affront the principle of equal sharing. I appreciate that parties are the best custodians of individual rights in any dispute and that each retain the autonomy to handle such right by way of a negotiated settlement in the best way thought fit provided there is no coercion or deceit. In the context of this matter, there having been a consensual understanding on distribution recorded before the court, such an outcome is incapable of challenge unless fraud, misrepresentation or such other vitiating factors be satisfactorily proved. I therefore find that the application lacks the prerequisites of section 76 of the Act, has no merit and order that it be dismissed.

11. On the last question of rectification of the certificate of confirmation of grant, I consider the proposal by the administrator to be sensible and fair for it takes into account persons who were not adequately provided for. I direct that there be rectification of the certificate of confirmation in terms of paragraph 14e of the Affidavit in support of upholding the grant issued on 21/8/2017, and sworn on the 26/11/2019, by the administrator Joseck Muthuri Mwarania.

12. Once the rectified grant is issued let the administrator move expeditiously to have the beneficiary shares transmitted within 90 days from today for the matter to be mentioned on 9<sup>th</sup> March 2022 to confirm compliance.

**DATED SIGNED AND DELIVERED AT MERU VIRTUALLY VIA MICROSOFT TEAMS THIS  
13TH DAY OF OCTOBER, 2021**

**PATRICK J.O OTIENO**

**JUDGE**

**In presence of**

Mr. Muthomi for applicant

Mr. Joseck Muchiri Mwarania

**PATRICK J.O OTIENO**

**JUDGE**