



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT EMBU

SUCCESSION CAUSE NO. 81‘A’ OF 2007

IN THE MATTER OF THE ESTATE OF NJIRU NJAGI (DECEASED)

DICKSON MUCANGI KARIUKI.....1ST APPLICANT

SARAH MUTITU KARIUKI.....2ND APPLICANT

IRENE NJOKI KARIUKI.....3RD APPLICANT

ROSA WAMBETI KARIUKI.....4TH APPLICANT

VERSUS

SILAS GICHOVI KARIUKI.....RESPONDENT

JUDGMENT

1. The matter for determination before this court is the summons for revocation of grant of letters of administration made to the respondent on 25.04.2016 and confirmed on the 8.12.2016.
2. The application is premised on the grounds on its face and supported by an affidavit sworn by applicants in which they depone that they are children of the deceased herein and that the respondent filed the succession cause secretly without informing them; that the respondent filed the succession cause fraudulently and appointed himself as the administrator without the knowledge of the applicants. Further that the respondent disposed 1/8 of the suit land to P.C.E.A. Mbuvi and included it in the certificate of the confirmation of grant.
3. They have urged this court to revoke and or annul the grant issued to the respondent and the suit land be restored in the name of the deceased until all the beneficiaries agree on the mode of distribution.
4. The respondent in his replying affidavit deposed that he did inform the applicants when he filed the succession cause and further that they sat as a family to determine the mode of distribution of the estate. He further submitted **that** since no beneficiary had the money to file the succession cause, they sat down and agreed that a portion of the estate be disposed off to enable them initiate the succession process. That this application is an afterthought on the part of the applicants who from the start never had any objection to him being issued with the grant. He urged this court to dismiss the application with costs.
5. I have considered the application herein together with the respondent's replying affidavit on record. I have equally considered the respective submissions of the parties.
6. The application is brought under Section 76 of the Law of Succession Act Cap 160 Laws of Kenya and Rule 44 of the Probate and Administration Rules 1980. Section 76 (a) - (d) provides for revocation of grant and the circumstances under which a grant of representation may be revoked. However, from the perusal of the application herein, the applicant's ground for seeking the revocation is mainly that the respondent did obtain the grant fraudulently.
7. As such, it is clear that the application is premised on the provision of section 76(b) and which provides that a grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by an interested party or of its own motion on the grounds either that the grant was obtained fraudulently by making of a false statement or by the concealment from the court of something material to the case.
8. It is trite, however, that the power to revoke a grant is discretionary and must be exercised judiciously. This was the court's view in the

case of **Albert Imbuga Kisigwa –vs- Recho Kawai Kisigwa, Succession Cause No.158 OF 2000**). Further, in the case of **Matheka and Another –vs- Matheka [2005] 2 KLR 455**, the court held that for a grant to be revoked/annulled, the grounds as provided for under section 76 ought to be proved with evidence. Even when revocation is by the court upon its own motion, there must be evidence to satisfy the grounds for revocation of grant .As such, any party making an application for revocation or annulment of a grant has a statutory duty to demonstrate the existence of any, some or all the ground(s) which he relies on in challenging the grant.

9. It is not disputed that the applicants are the sons and daughters of the deceased. The respondent did not dispute the same either but only asserted that they were in agreement unto the mode of distribution after having held a family meeting and all the parties agreed that since they had no money to file the succession cause, he was to sell a portion of the estate to cater for the necessary costs required in the process.

10. As I have already noted, the ground in support of the applicant’s application is that the applicants were never involved in the succession cause and as such, the respondent was able to sell a portion of the estate without the applicant’s consent and further never shared with them the proceeds of the sale. They deposed that the respondent herein was able to substitute their deceased mother as the administrator and proceeded to sub-divide the estate without involving them. The applicants’ case is premised on the process of confirmation of the grant herein as depicted in the prayers on the face of the application reading that “*the letters of administration made to the respondent on 25.04.2016 and confirmed on the 8.12.2016 be revoked/annulled.*”

11. The law allows for revocation of grant before or after confirmation. However, the conditions under which revocation can be done are clearly limited to obtaining of the said grant (where the proceedings to obtain the grant were defective in substance; and/or where 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; and/or where 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).

12. The Learned Judge **In re Estate of Juma Shitseswa Linani (Deceased) [2021] eKLR** held that where a person is unhappy with the process of confirmation of grant, such a person ought not to move the court under section 76 for revocation of grant. Instead, the person should file an appeal against the orders made by the court on distribution or apply for review of the said orders. This is because the court confirming a grant largely becomes *functus officio* so far as confirmation of the grant is concerned, and cannot revisit the matter unless upon review.

13. In the instant case, it appears that the applicants premised their application on the process of confirmation of the grant. That being the case, it therefore means that the grant herein cannot be revoked on the said grounds. The applicants ought to have applied for review of the orders confirming the grant.

14. The applicants argue that they were never informed about the process yet the respondent concedes that the persons who were not present were Benson Muruiki, Rosa Wambeti and Sarah Mutitu and in the same breadth, in as much as the applicants aver that they were never informed of the succession process, they conceded that the respondent made several attempts to inform them of the happenings on the ground in as much as they refused to attend.

15. The court record shows that on 25.04.2016 the respondent herein did move the court to be allowed to be substituted in place of their deceased mother (one Rosemary Wambeti Kariuki) and all the beneficiaries being present did not object and so the court proceeded to allow the application as had been prayed.

16. Further, the record shows that on 8th December, 2016 when the application for confirmation of the grant came up for hearing, all the beneficiaries were present and were agreeable to the mode of distribution of the estate. The court allowed the application as there was no objection from any of the beneficiaries who included the applicants herein.

17. The court in the case of **Stephen Kurgat Kimwei – Deceased [2017] eKLR** dismissed an application to revoke grant where the applicants were present in court during the hearing of the application for the confirmation of the grant.

18. Having considered the totality of the material before me, I am unable to find any merit in the application. The applicants have not demonstrated that the grant in this matter was obtained in a manner that rendered the grant defective in substance, or fraudulent by the making of a false statement, or that the respondent concealed from the court something material to the case, or made an untrue allegation of a fact essential in point of fact to the case.

19. It is my view, therefore, that the averments that the respondent never involved the applicants in the succession process and further that the grant was fraudulently obtained is unfounded.

20. The distribution of the estate shall proceed in accordance with the Certificate of Confirmation of Grant issued by the court on 8.12.2016.

21. Having considered the application herein, the applicants did not make out a case for revocation of grant issued to the respondent.

22. In the circumstances, I find that :

i. *The application before me is unmerited.*

ii. *The administrator to finalize the distribution of the estate with the proceeds from the sale.*

iii. *Costs to the respondent.*

23. It is so ordered.

Delivered, dated and signed at Embu this 17th day of November, 2021.

L. NJUGUNA

JUDGE

.....for the Applicant

.....for the Respondent