



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

SUCCESSION CAUSE NO. 380 OF 2008

IN THE MATTER OF THE ESTATE OF ANWAR SAID ABDALLA ALIAS ANWAR SAID (DECEASED)

FEISAL SAID.....PETITIONER

-VERSUS-

SHEHA ANWAR SAID AZUBEDI.....1ST OBJECTOR

RYDER ANWAR SAID.....2ND OBJECTOR

RULING

1. **Said Abdallah Azubedi** petitioned for a grant of letters of administration intestate on 22nd July 2018, as the father. He listed the following as his assets:-

- a. **Barclays Bank Account No. 35xxxxx**
- b. **Title No. Nakuru/ Municipality Block 15/344**
- c. **Title No. Nakuru/ Municipality Block 5/108**

2. The area chief's letter dated 15th February 2008 describes him as the only surviving beneficiary. A grant of letters of administration was granted to **Said Abdakkah Azubedi** on 4th October 2012. The grant was revoked on 22nd July 2015 under **section 70 of the Law of Succession Act**.

3. On 4th June 2019 **Feisal** filed a summons for revocation of the grant. On 25th July 2019, the grant was revoked and **Said Abdallah Azubedi** (deceased) who died on 25th February 2019, was substituted by **Feisal Said**. He sought to have the property distributed to him.

4. It is on the strength of this application that the objectors filed the notice of objection on 20th November 2019 on the following grounds: - -

a. *That the Administrator of the Estate of **Anwar Said Abdallah Alias Anwar Said (Deceased)** in obtaining the Grant of Letters of Administration and further seeking to have the confirmation of the Grant of Letters administration is guilty of concealing material facts.*

b. *That the Administrator of the Estate of **Anwar Said Abdallah Alias Anwar Said (Deceased)** in obtaining the Grant of Letters of Administration and further seeking to have the confirmation of the Grant of Letters Administration has failed to inform the court that the late **Anwar Said Abdallah alias Anwar Said (Deceased)** was survived by a widow and 3 children.*

c. *That the Administrator of the Estate of **Anwar Said Abdallah Alias Anwar Said (Deceased)** in obtaining the Grant of Letters of Administration and further seeking to have the confirmation of the Grant of Letters administration has kept the succession process a secret and further failed to inform the heirs and beneficiaries of the late **Anwar Said Abdallah Alias Anwar Said (Deceased)** that there exists a succession cause No. 380 of 2008.*

d. *That the Administrator of the Estate of **Anwar Said Abdallah Alias Anwar Said (Deceased)** in obtaining the Grant of Letters of Administration and further seeking to have the confirmation of the Grant of Letters Administration has not informed the Court nor placed before this Court consents by the heirs and beneficiaries of the late **Anwar Said Abdallah Alias Anwar Said (Deceased)** allowing him to wholly inherit the entire estate of **Anwar Said Abdallah Alias Anwar Said (Deceased)**.*

e. That the Administrator of the Estate of **Anwar Said Abdallah Alias Anwar Said (Deceased)** in obtaining the Grant of Letters of Administration and further seeking to have the confirmation of the Grant of Letters administration has kept it a secret from the Heirs and Beneficiaries of the late **Anwar Said Abdallah Alias Anwar Said (Deceased)** of the Deceased assets left behind.

f. That the Administrator of the Estate of **Anwar Said Abdallah Alias Anwar Said (Deceased)** in obtaining the Grant of Letters of Administration and further seeking to have the confirmation of the Grant of Letters administration is not entitled to the Estate of his brother **Anwar Said Abdallah Alias Anwar Said (Deceased)** under the **Law of Succession Act**.

g. That the heirs and beneficiaries of the estate of **Anwar Said Abdallah Alias Anwar Said (Deceased)** object to the Grant of letters of administration and further confirmation of the Grant of Letters of Administration to **Feisal Said** and the Grant of Letters of Administration should be revoked and instead granted to the objectors **Sheha Anwar Azubedi and Ryder Anwar Said**.

5. Parties agreed to file written submissions.

OBJECTOR'S SUBMISSIONS

6. The objector submitted that the grant issued to **Feisal Said** ought to be revoked under **Section 76 of the Law of Succession Act** and cited the case of *in re Estate of Tabitha Waitherera Kamau (deceased) (2019)eKLR*.

7. The objector submitted that the grant was obtained through concealment of material facts, deceit and fraud. The objectors further submitted that in the administrator informed the court that he was the only heir and beneficiary; that further Feisal Said proceeded to apply for confirmation without disclosing to the Court other beneficiaries entitled to the estate and urged this Court to be guided by **Ibrahim vs. Hassan & Charles Kimenyi Macharia**, Interested Party.

8. The objectors submitted that the rent collected by **Said Abdallah** and **Feisal Said** from Nakuru/ Municipality Block 5/ 108 from the year 2002 up to 2020 amounting to Kshs. 53,000,000/= should be remitted to the estate and cited the case of **Yaye Ali Sindi & Anor v Tima Omar Msuo (2015) eKLR** where the court stated as follows:-

“proceeds of the estate after payment of rates and utilities and repairs only should be distributed to heirs according to their respective shares.”

9. The objector further urged this Court to not only revoke the grant but also appoint the objectors as the administrators of the estate to enable them to collect the assets of the deceased and demand accounts from Feisal Said.

10. The objectors submitted that the rent collected from the estate of the deceased by Said Abdallah and Feisal Said be recovered from the shares of Feisal Said and be deducted from his shares in the distribution of the estate of **Said Abdallah Azubedi**.

11. The objectors urged this Court to dismiss the application by Feisal Said, Leila Mohamed and Zubeda Said seeking to remain as administrators with costs.

ANALYSIS AND DETERMINATION.

12. From the record, I note the petitioner has not filed any replying affidavit or submissions in respect to the objection filed by the objectors. I have analyzed the applications and the submissions filed and I find the following as the issues for determination:

- a. Whether the grant should be revoked
- b. What is the proper mode of distribution of the estate of the deceased?

13. Section 76 of the Law of Succession provides for revocation and annulment of a grant.

“Section 76 Revocation or annulment of grant

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.”

14. I now wish to consider whether any of the above grounds have been proved. The objectors have averred that the grant was obtained by fraud and concealment of material facts. According to the applicant Said Abdallah Azubedi the father to the deceased failed to disclose to the Court that the deceased was survived by a widow and 3 children and further, Feisal Said went ahead to confirm the grant without disclosing to the Court the existence of the widow and the children of the deceased; in the application for the confirmation of grant he deponed, he was the only surviving beneficiary to the estate of the deceased.

15. The wife and children of a deceased person are entitled to inherit his assets and any other relative has to prove that he or she was dependent of the deceased in order to inherit from the deceased person. From the averments herein, there was no disclosure of nuclear family of the deceased. Requirements for revocation of grant of letters of administration provided under Section 76 of the succession Act have been proved; the threshold for revocation of that the letters of administration intestate.

16. In so far as distribution of the estate of the deceased is concerned, it would be necessary to take *viva voce* evidence to determine the deceased's beneficiaries and accounts to be filed in respect to deceased's assets.

17. FINAL ORDERS

1) Grant of letters of administration issued to Feisal Said on 25th July 2019, is hereby revoked.

2) Accounts in respect to deceased's estate be filed in Court within 30 days from today's date.

3) *Viva voce* evidence to be adduced to determine beneficiaries of the deceased and mode of distribution of the estate.

RULING DATED, SIGNED AND DELIVERED VIA ZOOM AT NAKURU THIS 11TH DAY OF NOVEMBER, 2021

RACHEL NGETICH

JUDGE

IN THE PRESENCE OF:

JENIFER - COURT ASSISTANT

MR. SIMBA COUNSEL FOR THE APPLICANT