



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

SUCCESSION CAUSE NO. 457 OF 2007

IN THE MATTER OF THE ESTATE OF SAMIA WACHUKA SAID (DECEASED)

FIESAL ANWAR SAID.....PETITIONER/RESPONDENT

VERSUS

SHEHA ANWAR SAID AZUBEB.....1ST OBJECTOR/APPLICANT

RYDER ANWAR SAID.....2ND OBJECTOR /APPLICANT

RULING

BACKGROUND

1. **Abdallah Azubedi** petitioned for a grant of letters of administration intestate in respect of the estate **Samia Wachuka Said** (Deceased) on the 25th of June 2007 in his capacity as the husband of the deceased. He listed the beneficiaries of the deceased as follows: -
 - a. Abdallah Azubedi- widower
 - b. Arafat said Abdallah- son
 - c. Faisal Said Abdallah- son
 - d. Zubeda Said Abdallah- Daughter
2. The petitioner listed Title No. Bahati/Kabatini Block 1/3326 as the only asset of the deceased.
3. A Grant of Letter of Administration of the estate of the deceased herein was issued on 26th September 2007. On 4th October 2018, the grant of representation was revoked under **Section 70 of the Law of Succession Act**. The Petitioner died on 25th February 2019. On 25th July 2019 the Court reinstated the revoked grant and the Petitioner was substituted by **Faisal Said Abdallah**. The grant was confirmed on 25th July 2019 and by consent of the beneficiaries, the Property Bahati/Kabatini Block 1/3326 was allocated to Faisal Said.
4. It is on the strength of the confirmed grant that the Objectors filed a notice of objection on 9th September 2020 stating that they are entitled to the assets of the deceased being the children of **Anwar Said Abdallah** alias **Anwar Said** (deceased) son of **Samila Wachuka Said** (deceased)
5. The objectors filed the chamber summons application on 1st March 2021 seeking the following orders:
 - a. That the confirmation of Grant of Letters Administration dated 25th July 2019 granted to Faisal Said be annulled or revoked.
 - b. That leave be granted to Sheha Anwar Said Azubedi and Ryder Anwar Said objectors/applicants herein to be joined as joint administrators to the estate of Samila Wachuka Said (deceased).
 - c. That the costs of the application be paid to the applicants by the Respondents.
6. The application is premised on the following grounds: -

- a. *That the certificate of confirmation of a grant issued on the 25th of July 2019 was obtained by fraud.*
- b. *That the grant was obtained by the concealment of material fact from the court.*
- c. *That the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the confirmation of the grant.*
- d. *That the Administrator of the Estate of Samila Wachuka Said (Deceased) in obtaining the Grant of Letters of Administration and further seeking to reinstate the Grant of letters of administration Intestate issued on 24th February 2009, which was revoked on 20th July 2015 is guilty of concealing material facts.*
- e. *That the Administrator of the Estate of Samila Wachuka 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 Samila Wachuka Said (Deceased) was survived by a son Anwar Said Abdallah Alias Anwar Said (Deceased) who is an heir and beneficiary according to the Islamic law.*
- f. *That the Administrator of the Estate of Samila Wachuka 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 Anwar Said Abdallah Alias Anwar Said (Deceased) was survived by a wife and children who are heirs and beneficiaries according to the Islamic law.*
- g. *That the Administrator of the Estate of Samila Wachuka Said (Deceased) in obtaining the Grant of Letters of Administration and further seeking to reinstate the Grant of Letters of Administration Intestate issued on 24th February 2009 has kept this succession matter a secret and further failed to inform the heirs and beneficiaries of the late Samila Wachuka Said (Deceased) of the existence of succession cause No. 457 of 2007.*
- h. *That the Administrator of the Estate of Samila Wachuka Said (Deceased) in obtaining the Grant of Letters of Administration and further seeking to reinstate the Grant of Letters of Administration Intestate issued on 24th February 2009 has not informed the Court nor placed before this Court consents by the heirs and beneficiaries of the late Samila Wachuka Said (Deceased) allowing him to wholly inherit the entire estate of Samila Wachuka Said (Deceased).*
- i. *That the Administrator of the Estate of Samila Wachuka 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 Samila Wachuka Said (Deceased) of the deceased assets left behind.*
- j. *That the heirs and beneficiaries of the estate of Samila Wachuka 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.*

7. The application is supported by the annexed affidavit of **Sheha Anwar Said Azubedi**. In her averments, she reiterated the grounds of the application.

8. In response to the application, Feisal Said filed a replying affidavit and averred that the grant issued to him on 25th July 2019 be revoked and be issued to the estate of **Said Abdallah Azubedi**, the estate of **Anwar Said Abdallah**, the estate of **Leila** Said Abdallah, and to Feisal Said Abdallah and Zubeda Said Abdallah.

9. He proposed the estate to be distributed as follows: -

- a. Estate of Said Abdallah Azubedi (deceased) -1/4 or 25%
- b. Feisal Said Abdallah 3/16 or 18.75%
- c. Arafat Said Abdallah 3/16 or 18.75%
- d. Zubeda Said Abdallah 3/32 or 9.38%
- e. Estate of Leila Said Abdallah(deceased) 3/32 or 9.38%
- f. Estate of Anwar Said Abdallah (deceased) 3/16 or 18.75%

10. Parties agreed to canvass the application by way of written submissions.

APPLICANT'S/OBJECTOR'S SUBMISSIONS

11. The objector submitted that the grant was obtained by fraud and through concealment of material facts and should therefore be revoked under **Section 76 of the Law of Succession Act**. They cited the case of in the matter of the **Estate of LAK (deceased) (2014) eKLR**.

12. The objectors submitted that the petition filed on 22nd July 2008, by Said Abdallah Azubedi contained falsehoods and not all beneficiaries of the estate of Samila Wachuka Said consented and the said Abdallah was not the only beneficiary. Further that **Feisal Said** in seeking confirmation of the grant on 4th July 2019 lied under oath by stating that he is the only beneficiary; that the family of Anwar Said Abdallah was not informed, thus the petitioner contravened the provisions of **Section 76 of the Law of Succession Act**.

13. The Court was urged to revoke the grant and issue the same to the rightful heirs of the children of the deceased with costs, and order a refund of the rent collected from the estate of the deceased.

PETITIONER'S SUBMISSIONS

14. The petitioner submitted that the deceased having died a Muslim, the Islamic law applies. He submitted that the respondent took over the succession matter of his mother Samila Wachuka Said (Deceased) while brother Anwar Said Abdallah alias Anwar Said of his father upon his death and on behalf of the siblings; that prior to the demise of their father no sibling was aware of the succession.

15. The petitioner submitted that as per the Islamic law, he is required to apportion the heir's assets as follows:

- a. Estate of Said Abdallah Azubedi (deceased) -1/4 or 25%
- b. Feisal Said Abdallah 3/16 or 18.75%
- c. Arafat Said Abdallah 3/16 or 18.75%
- d. Zubeda Said Abdallah 3/32 or 9.38%
- e. Estate of Leila Said Abdallah(deceased) 3/32 or 9.38%
- f. Estate of Anwar Said Abdallah (deceased) 3/16 or 18.75%

16. The petitioner submitted that the deceased **Samila Wachuka Said** having predeceased her son Anwar Said Abdallah alias Anwar Said his estate was supposed to inherit a share of her estate thus the grant issued on 25th July 2019 having left out some beneficiaries should be annulled as per **section 76 (a) of the succession Act**.

17. This court was urged to allow the application and annul the grant.

ANALYSIS AND DETERMINATION

18. I have considered the averments herein and the submissions filed. I note that the parties are agreeable that the grant issued herein on 25th July 2019 to Feisal Said Abdallah should be revoked.

19. **Section 76 of the Law of Succession Act**, which provides for revocation and annulment of grant as follows:

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 has ordered or allowed; 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.”

20. The parties herein agree that the grant was obtained by concealment of material facts. The Petitioner **Abdallah Azubedi** (deceased) failed to disclose to the Court other beneficiaries entitled to inherit the estate of the deceased. The parties herein have satisfied this Court that the grant ought to be revoked under clauses 76 (b) and (c).

21. From the foregoing, I find that the grant issued to **Feisal Said** on 25th July 2019 was obtained fraudulently and by concealment of material facts from the Court owing to the exclusion of beneficiaries. I am therefore inclined to revoke the Grant.

22. FINAL ORDERS

- 1) Grant of letters of administration issued on 25th July 2019 to Feisal Said Abdallah is hereby revoked.
- 2) Statement of accounts in respect of the estate of the deceased to be filed.
- 3) Further directions to be given in the next mention.
- 4) Each party to bear own costs

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 RESPONDENT

APPLICANT - ABSENT