



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

FAMILY DIVISION

SUCCESSION CAUSE NO. 1125 OF 2017

IN THE MATTER OF THE ESTATE OF KINUTHIA GATHIGE (DECEASED)

JOSEPH KINUTHIA KAMAU.....1ST APPLICANT

SAMMY N. KINUTHIA.....2ND APPLICANT

JOHN KUNG'U KINUTHIA.....3RD APPLICANT

BENSON NJOGU KINUTHIA.....4TH APPLICANT

MARGARET WANGUI KINUTHIA.....5TH APPLICANT

MARY WANJIKU NJOGU.....6TH APPLICANT

LYDIA NJERI KINUTHIA.....7TH APPLICANT

BETH NJOKI KINUTHIA.....8TH APPLICANT

VERSUS

PETER THAIRU KINUTHIA.....RESPONDENT

RULING

1. Before this Court for is the summons for Revocation/Annulment of Grant dated 24th November 2020 by which the following Applicants

- a) JOSEPH KINUTHIA KAMAU - 1ST APPLICANT
- b) SAMMY N. KINUTHIA - 2ND APPLICANT
- c) JOHN KUNG'U KINUTHIA - 3RD APPLICANT
- d) BENSON NJOGU KINUTHIA - 4TH APPLICANT
- e) MARGARET WANGUI KINUTHIA - 5TH APPLICANT
- f) MARY WANJIKU NJOGU - 6TH APPLICANT
- g) LYDIA NJERI KINUTHIA - 7TH APPLICANT

h) BETH NJOKI KINUTHIA - 8TH APPLICANT

seek the following orders: -

1. THAT this Honourable court be pleased to suspend the appointment on 4th April 2018 of the Respondent, Peter Thairu Kinuthia as an administrator of the Estate of Kinuthia Gathige, the Deceased.

2. THAT the honourable court be pleased to revoke, set aside, suspend/stay the grant issued herein on the 4th April 2018.

3. THAT this honourable court be pleased to strike out the petition with costs.

4. SPENT.

2. The summons was supported by the Affidavits of even date sworn by all the **eight (8)** Applicants.

3. The Respondent **PETER THAIRU KINUTHIA** despite having been properly served with the summons herein did not file any reply thereto. As such the summons was unopposed. The court directed that written submissions be filed and the Applicants filed their written submissions dated **24th May 2021**.

BACKGROUND

4. This Succession Cause relates to the estate of one **KINUTHIA GATHIGE** (hereinafter '**the Deceased**') who died intestate on **16th May 2017**. Following the demise of the Deceased, the Respondent **Peter Thairu Kinuthia** filed a Petition dated **4th September 2017** seeking letters of Administration Intestate in respect of the estate of the Deceased. The Grant was duly issued in the name of the Respondent on **4TH April 2018**. The Respondent then filed a summons for confirmation of Grant dated **2nd January 2020**. The Applicants state that it was not until **November 2020** that they became aware of the Petition filed by the Respondent who is their brother. They instructed their Advocate to file this summons for revocation of Grant hence the present application.

5. As stated earlier the Respondent did **not** file any reply to this summons.

ANALYSIS AND DETERMINATION

6. I have considered this summons for revocation of Grant, the written submissions filed by the Applicants as well as the relevant law. The only question for determination is whether the Grant issued to the Respondent on **4th April 2018** ought to be revoked.

7. The Applicants state that they are all the children of the Deceased and beneficiaries his estate. They submit that contrary to the Affidavit dated **4th September 2017** in support of the Petition for Grant of letters of Administration Intestate filed by the Respondent in which it was averred that the Deceased was survived by only **three (3)** children the truth of the matter was that the Deceased left **nine (9)** children as survivors and beneficiaries to his estate.

8. The Applicants state that the Respondent did not involve or inform them in the filing of this Succession Cause. They further allege that the Respondent colluded with the Chief of **Pangani Location** to exclude the other beneficiaries. That the signatures of the **3rd** and **8th** Applicant on the consent form dated **4th September 2017** were forged.

9. For the above reasons, the Applicants submit that the Grant issued to the Respondent was obtained by fraudulent means and by use of misleading information and through concealment of material facts and on such ought to be revoked.

10. **Section 76** of the law of **Succession Act, Cap 160 Laws of Kenya** provides for the circumstances under which a Grant may be revoked 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 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.

11. Therefore, in order for an order of revocation of Grant to be made the applicant must satisfactorily prove one of the Grounds for revocation as set out in **Section 76**.

12. In the matter of the **Estate of L.A.K (Deceased)[2014] eKLR**, the Court held as follows :-

“4. Revocation of grants is governed by Section 76 of the Law of Succession Act. The relevant portions of Section 76 are paragraphs (a), (b) and (c) since the issues raised relate to the process of the making a grant. A grant may be revoked where the proceedings leading up to its making were defective, or were attended by fraud and concealment of important matter, or was obtained by an untrue allegation of a fact essential to the point.” (own emphasis)

13. The Applicants herein alleged that in his Petition for letters of Administration dated **4th September 2017** the Respondent deliberately misled the court by excluding the names of **five (5)** out of the **nine (9)** children of the Deceased.

14. I have perused the Petition dated **4th September 2017**. At paragraph **(3)** of the Affidavit in support, it is indicated that the Deceased died Intestate and was survived only by the following –

(a) **Kinuthia Kungu - Son – 49 years - ID No. xxxx.**

(b) **Beth Njoki Kinuthia – Daughter – 41 years - ID No xxxx**

(c) **Peter Thairu Kinuthia – Son – 37 years – ID No xxxx.**

The Respondent indicated in the petition that he was a ‘son’ to the Deceased.

15. The Applicants have alleged that the above information is false. That in fact the Deceased was survived by **nine (9)** children. The Applicants claim that the chief’s letter dated **22nd August 2017** which names only **three (3)** survivors is a false document and was procured by the Respondent in furtherance of his scheme to mislead the court.

16. **Section 51** of the **Laws of Succession Act** deals with the information that should go into an application for grant of representation. **Under Section 5 (2) (g)** it is stated: -

“51 (2). An application shall include information as to ...

(g) in cases of total or partial intestacy, the names and addresses of all surviving spouses, children, parents, brothers and sisters of the deceased, and of the children of any child of his or hers then deceased...; (own emphasis).

17. The Applicants have claimed that they are all the children of the Deceased and that the Respondent is their brother. In view of the fact that this summons was not opposed the court has no reason to doubt this averment. The Respondent despite having been given an opportunity to do so did not challenge and/or controvert this claim by the Applicants.

18. In **RE ESTATE OF LAURENT NTIRAMPEBA (Deceased) [2017] eKLR**, **Hon Lady Justice Achode** held thus –

“24. On the question of revocation of the grant issued, it is settled law that a person who approaches the Court for grant of relief, equitable or otherwise, is under a solemn obligation to candidly disclose all the material/important facts which have a bearing on the adjudication of the issues raised in the case. A duty is owed to the court to bring out all the facts and refrain from suppressing any material facts. If one is found guilty of concealment of material facts or making an attempt to pollute the pure stream of justice, the court not only has the right, but the duty to deny relief to such person. This was the expression of the court in R. v. Kensington Income Tax Commissioner [1979] 1 KB 486 by Viscount Reading, Chief Justice of the Divisional Court. (own emphasis)

19. It is manifest that in Petitioning the High Court for letters of Administration Intestate the Respondent withheld a material fact, i.e., the fact that the Deceased was actually survived by **nine (9)** children. Further, in an attempt to mislead/deceive the court the Respondent averred that the Deceased was survived by only **three (3)** children.

20. I note that a letter of consent dated **4th September 2017** is annexed to the Petition filed by the Respondent. This consent is indicated to

have been signed by the 3rd and 8th Applicants. The said Applicants have disowned those signatures and allege that the same were forged.

21. The Applicants in their respective affidavits all aver that the Respondent did not involve them in the Succession Cause of their late father neither did he serve any of them with a copy of the Petition for Grant of letters of Administration Intestate. From the evidence availed to the court what emerges is a calculated scheme by the Respondent to disinherit his siblings and to obtain letters of Administration to the prejudice of the other survivors.

22. I am satisfied that the proceedings to obtain the Grant issued to the Respondent were defective in nature. I find there is evidence of fraud by way of false statements (the chief's letter) and I find evidence of concealment of material facts. In the circumstances, I have no hesitation in revoking the Grant issued to the Respondent on 4th April 2018.

23. The parties are directed to file a fresh Petition for Grant of letters of Administration Intestate within **forty (40)** days hereof. No orders on costs.

DATED IN NAIROBI THIS 2ND DAY OF NOVEMBER, 2021.

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MAUREEN A. ODERO

JUDGE