



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

SUCCESSION CAUSE NUMBER 76 OF 2015

IN THE MATTER OF THE ESTATE OF LIVINGSTONE KAMAU RUFFUS (DECEASED)

LEAH WAIRIMU WAWERU.....1ST APPLICANT

MARTHA NYAMBURA KANGETHE.....2ND APPLICANT

MILKA WANGARI KAMAU.....3RD APPLICANT

JOSHUA NJUGUNA KAMAU.....4TH APPLICANT

DAVID NGUGI KAMAU.....5TH APPLICANT

ALBERT GICHERU KAMAU.....6TH APPLICANT

SIMON GICHERU KAMAU.....7TH APPLICANT

RUTH MUMBI KAMAU.....8TH APPLICANT

VERSUS

WAITHIRA MOHOYO.....1ST RESPONDENT

RUFFAS MWANGI KAMAU.....2ND RESPONDENT

RULING

1. Before me is the Notice of Motion filed on 26th November, 2019 and dated 22nd November 2019. It does not say under what provisions of the law it is brought but it seeks orders;

1. Spent

2. Spent

3. The grant confirmed herein be revoked and new administrators be appointed to administer the estate of the deceased and costs be provided for.

2. The application is based on the following grounds; -

a) The administrators herein have started subdividing the parcel herein without consulting all the beneficiaries/applicants herein.

b) The proposed sub-division is contrary to agreed mode by all family members vide the family meeting held to distribute the land.

c) Unless stopped by court, the land will be sub-divided and titles issued unfairly which will lead to displacement of some beneficiaries already in possession.

d) Affidavit of MARTHA NYAMBURA.

3. Martha Nyambura in the affidavit sworn on 22nd November 2019 deponed that she was one of the beneficiaries of the estate, and that upon the confirmation of the grant, the parcel of Mau Narok/Siapei Block 3/413 had been registered in the names of their mother, Waithira Mohoyo and the sharing would be in accordance with the agreement of the beneficiaries.

4. That the reason for the application was that the sub-division had been alone giving some of the beneficiaries larger portions than others, while others had been moved to some unproductive areas in an exercise of unfairness and bias. That is so doing the administrators had acted against the trust bestowed on them to faithfully administer the estate and should be replaced.

5. In response to Waithira Mohoyo swore an affidavit on 13th December 2019. She deponed that the applicants were her children and she was the widow of their father, the deceased. That regarding the subdivision it was done after she held a meeting with all of them at her home. That she informed them that the girls, including herself, would get 2.5 acres each and while the boys would get 3.8 acres and there was no objection; that the deceased, before he died had given the 2nd respondent a plot within the parcel 413 in recognition of the fact that he had paid school fees for his siblings.

6. That the same applicants had paid survey and subdivision fees and it was only upon the completion of the work that the grumbling began. That before the works, each had been asked to pick their portion, which they had done, but now they were even squabbling for her own share of 2.5 acres. That worst of all was that the applicants had made false allegations to the police and local administration that she was of unsound mind.

7. The 2nd respondent also swore an affidavit in response on 10th December 2019 on his and his mother's behalf. He reiterated the process of obtaining the grant. That up to the time of obtaining a confirmation of grant the whole family was in agreement. However, that the sisters, who are the applicants, live away from the parcel of land, that they do not want their mother to retain her 2 ½ acres, and that in their scheme of things their mother's homestead ceases to exist.

8. The application was canvassed by way of written submissions with the parties relying on their affidavits and annexures.

9. For the applicants it was submitted that the 2nd respondent has taken over the administration of the estate, and dictates what ought to happen in the estate. That it was their belief that once the estate was in their mother's name they would all then sit down and agree on how the same would be shared.

10. It is submitted by N. Ikua & Company Advocates that since the administrators have demonstrated bias, a new grant should be issued clearly defining how the land should be shared and replacing the current administrators; that each beneficiary has an equal share in the estate. They rely on **Section 28 and 42 of the Law of Succession Act; Re estate of Julius Ndubi Javan (deceased) [2018] eKLR, Section 47 of the Law of Succession Act and Rule 73 of the Probate and Administration Rules.**

11. For respondent Omwenyo & Company Advocates filed submissions and supplementary submissions. They set out three issues determination;

a) Whether the administrators have adhered to the provisions of the Law of Succession Act in administering the estate.

b) Whether the grant ought to be revoked.

b) That the application is fatally defective.

12. On the first issue the respondents rely on the applicants' consent to the distribution of the estate, where the whole of the estate was transmitted to the deceased widow, the 1st respondent. They argue that estate devolved to the widow not in trust for beneficiaries, but absolutely. Hence, the applicants cannot argue that there was an agreement to distribute the estate in any other manner not exhibited before the court together with their consent. That they have also not availed evidence of the alleged family meeting to distribute the estate. That if the applicant had intended that the estate be distributed in certain specific shares, then their consent to the confirmation ought to have said so. That it can be seen from the distribution by the applicants that they do not want their mother have her 2.5 acres of land

13. It is also argued for the respondents that they have complied with **Section 83(e) of the Law of Succession Act**, to complete the administration of the estate within six (6) months.

14. On b) it is argued that the applicants have not advanced any reason for the revocation of the grant.

15. On c) the respondents attacked the manner in which the application for revocation was brought, without following the appropriate procedure, through a Notice of Motion; that no provisions of the law are cited, and reliance is placed on **Nyeri High Court Succession Cause Number 113 of 1994 Re Estate of Mumunya Njogu (deceased) [2008] eKLR** and the judgment of *M.S.A. Makhandia J* (as he then was).

16. In the Supplementary Submissions, it was further argued that the applicants had not proposed new administrators and that none of the beneficiaries had rejected the acreage distribution.

17. The only issue for determination is whether the application has merit.
18. The argument that the application is defective for lack of procedure citing of the rule of law upon which it has been brought is tenable to the extent that there is a reason why the law is there, and provides specific provisions so that a party seeking relief bases those reliefs on that law.
19. Look at the grounds for the prayer for revocation; the alleged subdivision of the land without consulting the beneficiaries or against the agreed mode and fear of displacement by some beneficiaries. Are these grounds that can support an application for revocation of grant?
20. Revocation is provided for under **Section 76 of the Law of Succession** and the grounds are set out clearly; that proceedings to obtain ground were defective in substance; grant was obtained fraudulently by the making of false statement and concealment of material facts from court; grant was obtained by means of untrue allegation of fact essential to the issuance of the grant; failure of the person to whom the grant was made to *inter alia* apply for confirmation of the same or administer the estate; grant becoming useless, inoperative through subsequent circumstances.
21. A look at the grounds on the face of the application and the Supporting Affidavit of Mary Nyambura reveals none of the above grounds.
22. The grant was properly obtained, the same was confirmed by consent of all parties. What the applicants have placed before me before me is the issue of the sharing of the estate post confirmation of the grant. This is clearly outside the provision of **Section 76 of the Law of Succession Act**. When the Summons for Confirmation of grant was made to the 1st respondent, their mother, they were all in agreement that the whole estate would go to her. The Certificate of Confirmation of Grant made on 12th May 2016 shows that Waithera Mohoyo would get the whole share of Mau Narok/Siapei Block 3/413 and shares of National Bank Limited. There was no document annexed to the Summons for Confirmation of Grant showing that upon the estate going to the 1st respondent she would distribute it in a certain way.
23. All her children, the applicant included signed the consent dated 15th May 2015 to the effect that she would inherit the whole estate. Upton that point everything was done according to the provisions of **Section 71 of the Law of Succession Act**, Proviso to **Section (d)** that, in cases of intestacy the grant of letters of administration shall not be confirmed until the court is satisfied as to the respective identities and shares of all persons beneficially entitled and when confirmed such grant shall specify all such persons and their respective shares.
24. Looking at the Summons for Confirmation of Grant, it is clear that the parties were all in agreement that their mother would inherit their father's property. They satisfied the court to that effect.
25. Clearly the applicants have not established any of the grounds placed out under **Section 76 of the Law of Succession Act** for the revocation of grant. On that ground alone the application has no merit.
26. However, do the applicants have a recourse? Well, their mother whom they made the sole heir of their father's property decided to distribute the property. Neither side produced any minutes of the alleged family meeting where the beneficiaries are alleged to have shared the land.
27. This court finished its work in accordance with the parties' wishes, as the estate transmitted to the 1st respondent and a title deed was issued in her name. This dispute, post transmission, does not bring the matter within the purview of **Section 76 of the Law of Succession Act** or, the provisions of **rule 73 of the P&A rules**.
28. The application is not merited and is dismissed with no orders as to costs.

Delivered and Signed at Nakuru this 2nd September, 2020.

VIA Email

Court Assistant Edna

To be sent to:

N. Ikua & Company Advocates for Applicants

Omwenyo & Company Advocates for Respondents

Mumbua T. Matheka

Judge

2nd September, 2020.