



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

SUCCESSION CAUSE NO. 1143 OF 2008

IN THE MATTER OF THE ESTATE OF MARIA GEBOI CHOGOCHU alias MARIA GEBUI CHOGOCHU (DECEASED)

RHODA WANJIKU GITAU.....1ST APPLICANT

HANNAH WAMAITHA MURIBA.....2ND APPLICANT

VERSUS

WAITHERA GITAU KABIRU alias RUTH WAITHIRA GITAU.....1ST RESPONDENT

GEORGE WAWERU KABIRU.....2ND RESPONDENT

RULING

1. By way of Summons for Revocation of Grant, dated 26th September, 2019 the Applicants seeks revocation of the Grant of Letters of Administration issued in respect of the Estate of Maria Geboi Chogochu Alias Maria Gebui Chogochu (Deceased) granted to Rhoda Wanjiru Gitau, Hannah Wamaitha Muriba and George Waweru Kabiru on 30th June 2009, rectified on 14th June 2010 and confirmed on 28th February, 2012. The Applicants also prays that a new grant be issued to Rhoda Wanjiku Gitau and Hannah Wamaitha Muriba.

2. The application is premised on the grounds that, one of the beneficiaries' George Waweru Kabiru who is a grandchild of the deceased was erroneously included as a beneficiary and administrator of the deceased's estate. Further, that the said individual has unlawfully meddled with the estate of the deceased creating conflict and delaying the process of administration of the estate to its conclusion.

3. The 1st Applicant, Hannah Wamaitha Muriba swore an affidavit in support of the summons for revocation of grant dated 26th September, 2019 and on behalf of Rhoda Wanjiku Gitau and Susan Wangui Kanene. She depones that the deceased who is her mother was survived by four (4) daughters, namely; Ruth Waithira Gitau, Hannah Wamaitha Muriba, Rhoda Wanjiku Gitau and Susan Wangui Kanene. Further, that George Waweru Kabiru a son of Ruth Waithira Gitau, confused them into being appointed as one of the administrators of the estate of his grandmother, the deceased herein. She avers that a grandson has no beneficial interest and should be removed as an administrator and beneficiary of the estate. It is her case that all daughters of the deceased should get an equal share of the estate excluding the grandson.

4. The application is opposed by the 2nd respondent through a replying affidavit dated 14th November, 2019, a further affidavit dated 5th August, 2020 and another affidavit deponed by Richard Muturi Waithira dated 5th August, 2020.

5. In his response, the 2nd respondent depones that the deceased considered him as his son and they lived together while he took care of her until her demise. He avers that the deceased had made it clear that he was an heir as an adopted son and began the process of allocation and distribution of her property being L.R Ngong/Ngong/4988 measuring 3 acres. That, upon the demise of his grandmother, her surviving family sat down and reduced her wishes with regard to sub-division of property into writing. That, all the family members including the applicants appended their signatures and confirmed that what was written were the deceased's wishes expressed before her death. He adds that these resolutions were reflected in the agreement signed and further ratified by a letter from the chief which included him as a beneficiary of the estate. Consequently, the applicants cited him to take out letters of administration and summons for confirmation of grant.

6. The 2nd respondent further states that each beneficiary's share of the estate was determined during the lifetime of the deceased and the only issue was the manner of sub-division on the ground. He depones that out of all the grandchildren of the deceased, only he was allocated a share of the estate as this was in accordance with the wishes of the deceased. That this decision was reached unanimously by all children and grandchildren of the deceased. He indicates that he was also given the deceased's she-goat to rear and another he-goat was slaughtered during the family's celebrations.

7. He claims that the Applicants' change of heart has been fueled by the promise of monetary gain from the compensation proceeds of the Standard Gauge Railway through compulsory acquisition from the Government. He argues that the application lacks merit and should be dismissed with costs for failing to satisfy the threshold for revocation of grant.

8. In the further replying affidavit dated 5th August 2020, Richard Muturi Waithira deponed that he is the 4th born child of the 1st respondent and a sibling to the 2nd respondent. He reiterates sentiments by the 2nd respondent that he was taken up by the deceased as her son living with her until her demise. He asserts that upon her grandmothers' demise, the entire family being four (4) daughters and eight (8) grandchildren unanimously agreed on the distribution of the estate. That, none of the other grandchildren were to receive a share apart from the 2nd respondent. He contended that the inclusion of the 2nd respondent as a beneficiary was not fraudulent or done by mistake.

9. The parties filed written submissions in support of their respective positions. The applicant through the firm of M.N Kamau and Company Advocates submitted that the Law of Succession Act provided for the estate of the deceased to be shared equally among the beneficiaries who are the children of the deceased. It is the applicants' case that a grandson has no beneficial interest and should be removed from being an administrator and a beneficiary. They prayed for the deceased property to be distributed equally among the four (8) daughters of the deceased.

10. For the respondents, Munyao-Kayugira and Company Advocates submitted that the Applicants had not cited or proved any of the grounds stipulated in **Section 76** of the Law of Succession Act on revocation of grant. Secondly, that it was uncontroverted that the 2nd respondent was a dependant within the meaning of **Section 29** of the Act and as such was entitled to a share as a beneficiary. Finally, that the wishes of the deceased are paramount and should be taken into consideration when distributing estate property. They relied on the cases of **Benjamin Mbugua Kamau vs Peter Kimani Kimiti & Another [2017] eKLR** and **Paul Kiruhi Nyingi & Another vs Francis Wanjohi Nyingi [2009] eKLR** in support of their case.

11. I have considered the summons, the affidavits in support and in opposition to and the written submissions by counsels. The key issue for the Court's determination is whether this application meets the threshold for revocation or annulment of grant under **Section 76** of the Law of Succession Act.

12. **Section 76** of the Succession Act 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 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.

13. The only ground raised by the Applicants in their application for revocation/annulment of grant, is the alleged mistake or error in including the 2nd respondent as a beneficiary to the estate of the deceased. It is their position that the 2nd respondent 'confused' them into being appointed as one of the administrators of the estate of the deceased. The 2nd respondent asserted that the grant was confirmed with the consent of all beneficiaries and was cognizant of the wishes of the deceased. It was his case that the deceased distributed the property during her lifetime and as such her wishes should not be interfered with.

14. From the record, the Petition for letters of administration intestate was filed on 30th May, 2008 by the Applicants herein. In Form P & A 5, the beneficiaries were disclosed as four (4) children of the deceased and a grandson, George Waweru Kabiru and the only asset of the deceased disclosed in that form was L.R Ngong/Ngong/4988. The Petition was accompanied by a letter from Chief Oloolua Location in Ngong' which also included the 2nd respondent as one of the survivors, including the four (4) children. On even date, the Petitioners filed a citation, citing the respondents herein to accept or refuse letters of administration of the estate of the deceased. On 30th June, 2009 letters of administration intestate were issued to the Applicants herein and rectified on 14th June 2010 to include the 2nd respondent as an administrator. Subsequently, the administrators filed the Summons for confirmation of grant and the schedule of distribution of the estate of the deceased which all beneficiaries consented to. The grant was confirmed on 28th February, 2012.

15. In the instant application, the applicants have invoked the provisions of **Section 76** of the Act and they were therefore required to show that the impugned grant was defective in substance, obtained fraudulently or by making of an untrue allegation to justify the making of the grant such that this court's discretion ought to be exercised in their favour. From the pleadings, the applicants claim that the 2nd respondent confused them into including him as a beneficiary yet he was not. How this was allegedly done is not clear. What is clear from the record is that the applicants have not adduced any evidence to show that the proceedings to obtain the grant were defective in substance.

16. The second and third limbs provided for revocation of grant are whether 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, or whether the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant. The record indicates that the 2nd respondent was listed as one of the beneficiaries when the petition was filed. The confirmed grant shows that she was given a share. Although faced with some challenges, the process of distribution of the estate through sub-division has already begun. I find that the application for revocation of grant is an afterthought.

17. The applicants themselves included the 2nd respondent through citation and consented to his inclusion as a beneficiary of the estate. No evidence of any fraudulent endeavour by the 2nd respondent has been adduced. The applicants have not proved that the proceedings were defective. The petition was properly presented in court and concluded with a confirmation of grant by consent of all the beneficiaries. The applicants have not proved that the grant was obtained fraudulently, or by concealment of material facts or by means of making untrue allegations.

18. The upshot of the above analysis is that the Summons dated 26th September, 2019 for revocation or annulment of grant is lacking in merit and is consequently dismissed. Each party to bear their own costs.

SIGNED DATED AND DELIVERED IN VIRTUAL COURT THIS 1ST DAY OF DECEMBER, 2020.

L. A. ACHODE

HIGH COURT JUDGE

In the presence ofAdvocate for the Applicants

In the presence ofAdvocate for the Respondents