



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT EMBU

SUCCESSION CAUSE NO. 423 OF 2002

IN THE MATTER OF THE ESTATE OF NYAGA KARUMA (DECEASED)

AND

NJIRU GAKENGE.....APPLICANT/ADMINISTRATOR

VERSUS

SIMON MBOGO GAKENGE.....RESPONDENT/ADMINISTRATOR

R U L I N G

A. Introduction

1. This is a ruling on the summons for revocation/annulment of grant dated 13th September 2016 and confirmed on 10th December 2014.
2. The application is based on the grounds that the amended grant was obtained fraudulently by making of false statement made by the respondent/administrator without the applicant's knowledge.
3. Further that the amended confirmation of grant was obtained by means of an untrue allegation of fact under **Rule 76 (b) and (c) of the Law of Succession Chapter 160 Laws of Kenya**.

B. Respondent's Case

4. In response, the respondent filed a replying affidavit dated 14th October 2016 in which he deponed that the applicant had always blocked the full implementation of the grant on frivolous grounds and applications in total abuse of court process.
5. The respondent further deponed that the applicants had advanced no good grounds to warrant setting aside of the confirmed grant and the application ought to be dismissed.

C. Respondents' Submission

6. The respondent submitted that the applicant had always participated in the succession proceedings since 1996. Further that since being named beneficiary in the amended certificate of confirmation of grant issued on the 10/12/2014 the applicant had frustrated the implementation of the grant.
7. The respondent further submitted that the respondent had never challenged the mode of distribution as decreed by the court by way of appeal or review. The applicant has not demonstrated or satisfied the provisions of Section 76 of the Law of Succession.
8. I note that the applicant failed to file submissions within the time given by the court.

D. The Determination

9. The only issue for determination is whether or not the applicant has demonstrated sufficient grounds for court to revoke the grant as provided for under Section 76 of the Law of Succession Act.
10. The original grant was issued and confirmed on 9/07/1999 in favour of one Anne Kanini Gakenge the surviving widow of the deceased. The 1st administrator died before the execution of the grant leaving the co-administrator who the respondent Simon Mbogo Gakenge. The

applicant successfully applied to be joined as a co-administrator with the respondent which application was allowed.

11. It is noted that the applicant seeks to revoke the rectified grant issued to him and the respondent on 10/12/2014 claiming that the family did not consent to it.

12. **Section 76 of the 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 an 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 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 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. “

13. The above provision was construed by the court of appeal in the case of **Matheka and Another vs Matheka [2005] 2 KLR 455** where the court of appeal laid down the following guiding principles.

“i. A grant may be revoked either by application by an interested party or by the court on its own motion.

ii. Even when revocation is by the court upon its own motion, there must be evidence that the proceedings to obtain the grant were defective in substance, or that the grant was obtained fraudulently by the making of a false statement or by concealment of something material to the case or that the grant was obtained by means of untrue allegation of facts essential in point of law or that the person named in the grant has failed to apply for confirmation or to proceed diligently with the administration of the estate.”

14. The grounds upon which a grant may be revoked or annulled are thus statutory and it is incumbent upon any party making an application for revocation or annulment of a grant to demonstrate the existence of any, some or all the above grounds. A close look at **Section 76** shows that the grounds can be divided into the following categories: -

- the propriety of the grant making process;

- mal-administration or

- where the grant has become inoperative due to subsequent circumstances.

15. I do note that the distribution of the deceased's estate was done in 1999, over 20 years ago, and the applicant never filed any application for revocation. There is an application on record by one Danson Kariuki, a brother of the applicant herein, that was dismissed on the 16th May 2013. The reasons advanced in that application was that the respondent herein had been allocated a bigger share. This is basically the same argument advanced in this application by the applicant.

16. As borne by the record, the applicant attended court during at all the appointed sessions and participated at every stage. He was present even when various rulings were delivered as well as the judgment. On the distribution of the estate. It is therefore dishonest for the applicant to claim in this application that the grant was obtained through fraudulent means or by concealment of facts material to the case.

17. I have perused the ruling delivered by the court on 10/12/2014 which rectified the grant by removing the applicant as a co-administrator and retained the respondent herein.

18. The court was satisfied that the applicant had refused to cooperate with the respondent in implementing the grant to the extent of rendering the grant inoperative. This was meant to assist the beneficiaries to actualize their inheritance rights which the applicant has violated for a long time.

19. With this information, the applicant cannot successfully apply for revocation on the grounds he has stated in his application.

20. It is important to restate the history of this case. In a succession SPM No. 202 of 1996, the deceased's estate was distributed among the beneficiaries on 9/07/1997. Since the confirmation of the grant, the same has never been executed due to the delay caused by the applicant herein and his brother Danson Kariuki Nyaga who have been filing numerous applications, all of which have not been successful.

21. This is the 2nd application for revocation of the grant. The court recognized the delay in implementation of the grant when it authorized the Deputy Registrar of this court to execute all the necessary documents on 10/12/2014 on behalf of the applicant who is the administrator.

22. The applicant still filed another application which is the subject of this ruling. The delay of over seventeen (17) years in respect of implementation of the grant is uncalled for and has continued to inconvenience other beneficiaries who want to take their shares and move on after the death of the deceased.

23. It is also imperative to note that the judgment of Wandera V.L. Senior Principal Magistrate who distributed the estate is still valid. The order authorizing the Deputy Registrar to execute the necessary documents issued four (4) years ago is still valid but could not be implanted due to this 2nd application to revoke the grant.

24. It is my considered opinion that the applicant has failed to demonstrate that the grant confirmed on 10/12/2014 was obtained by fraudulent means or by concealment of facts material to the case.

25. This application has no merit and it is hereby dismissed with costs to the respondent.

26. It is hereby so ordered.

DELIVERED, DATED AND SIGNED AT EMBU THIS 17TH DAY OF JANUARY, 2019.

F. MUCHEMI

JUDGE

In the presence of: -

Ms. Muriuki for Ithiga for Respondent

Ms. Zekele for Githinji for Applicant

Respondent/Administrator present