



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

(Coram: Odunga, J)

SUCCESSION CAUSE NO. 19 OF 2016

IN THE MATTER OF THE ESTATE OF BENSON MAINGI MULWA-(DECEASED)

PHILIP WAMBUA MAINGI.....1ST OBJECTOR/APPLICANT

ALEXANDER PAUL MAINGI.....2ND OBJECTOR/APPLICANT

JOSEPH MULWA MAINGI.....3RD OBJECTOR/APPLICANT

VERSUS

JOSEPH MULWA MAINGI....ADMINISTRATORS/RESPONDENT

RULING

1. By Summons for Revocation of Grant dated 3rd April, 2018, the Applicants herein seek an order revoking and/or annulling the grant of Letters of Administration issued to the Respondent herein.

2. According to the Applicants, they are all brothers while the deceased herein is their father and the Respondent their step-brother. From the affidavit, it is indicated that the Estate of the Deceased comprised of three households, and it was their case that the Respondents was required to seek the consent of all the dependants of the deceased of full age prior to instituting these proceedings. However the Respondent without the knowledge of the applicants proceeded to apply for letters of administration in respect of the deceased estate pursuant to which a grant was issued to him on 30th January, 2017. It was averred that this cause was secretly filed hence these proceedings were fraudulent and defective in substance. Apart from the applicants, it was disclosed that there were other dependants who were omitted and that their consents were similarly not obtained by the Respondent.

3. The applicants averred that they only became aware of these proceedings on 12th March, 2018 when the Respondent took to them to execute in support of the application for confirmation of grant.

4. The application was however opposed by the Respondent. While admitting that the applicants are his step brothers, the Respondent denied that the alleged omitted persons are dependants of the deceased herein though they can be described as heirs. The Respondent however contended that he filed this petition without the benefit of legal counsel but has since been legally advised that he ought to have listed all the children of the deceased, which he did not. It was however his case that as a family, they had sat down and agreed on each beneficiary's entitlement and with the consent of everyone he listed those that stood to get shares.

5. The Respondent contended that the land has long since been shared out according to Kamba Customary Law and everyone entitled to a share has settled on his own portion, with the boundaries clearly demarcated. It was his case that his sisters got married a long time ago with some being over 70 years old and are not interested in the estate.

Determination

6. I have considered the application, the affidavits both in support of and in opposition to the application and the submissions filed.

7. Section 76(a), (b) and (c) of the *Law of Succession Act* provides as hereunder:

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;

8. It is contended in petitioning this court for grant the Respondent omitted to seek the consent of some of the beneficiaries including the applicants and that some of the beneficiaries were omitted from the list of beneficiaries as presented before this Court. Section 51 (2) (g) of the **Law of Succession Act** provides that:-

In cases of total or impartial 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.

9. Part VI Rule 26(1) of the **Probate and Administration Rules** on the other hand provides that:

Letters of administration shall not be granted to any applicant without notice of every other person entitled in the same degree as or in priority to the applicant.

10. In this case, the respondent admits that some of the beneficiaries were omitted from the list he presented before the Court. He however deposed that he was not aware that he was obliged to disclose all the beneficiaries. He further contends that he only dealt with those whom it was agreed were entitled to share in the estate of the deceased and this entitlement, according to him, was based on Kamba Customary Law.

11. I have considered the issues raised herein. Whatever, the applicant may have believed, it is clear that he did not comply with the provisions of the **Law of Succession Act**. Failure to do so clearly renders the proceedings leading to the grant of letters herein defective in substance. Further by omitting to include some beneficiaries, the Respondent did not make a full disclose of the facts relating to the beneficiaries of the estate. It therefore follows that the grant herein was obtained by means of an untrue allegation of a fact. That fact was clearly essential in point of law to justify the grant and it does not matter whether the allegation was made in ignorance or inadvertently.

12. In the premises the summons for revocation of grant succeeds and I hereby revoke the grant of letters of administration issued to **Joseph Mulwa Maingi** herein on 30th January, 2017.

13. Since only the Objectors/Applicants complied with the Court's directions with respect to furnishing of soft copies the costs of this application are awarded to the Objectors/Applicants.

14. It is so ordered.

Read, signed and delivered in open Court at Machakos this 6th day of February, 2019.

G V ODUNGA

JUDGE

Delivered in the presence of:

Miss Wambua for Mr Kingoo for the Objector

Mr Mutua Makau for Mr Mwangangi for the Administrator

CA Geoffrey