



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 1995 OF 1999

IN THE MATTER BETHUEL KIBUE KABEBE alias BETHUEL KABUI

JANE WANJIRU KABUE.....PLAINTIFF

-VERSUS-

GRACE WANJIRU KABUI.....DEFENDANT

JUDGMENT

1. The Application coming for consideration in this Ruling is the one dated 31/3/2008 seeking the following prayers.

- (i) THAT the letters of Administration and Certificate of confirmation of grant issued to Grace Wanjiru Kabue on 24.4. 2001 and on 30.11.2004 respectively be revoked and annulled.
- (ii) THAT any future transaction involving Land Parcel No. KIAMBA/WAGUTHU/183 stayed pending the hearing and determination of this application and/or until further orders of this Court.
- (iii) THAT the Respondent be fined Kshs.10,000 and or be sentenced to one year imprisonment for willfully or recklessly making a false statement or both such fine and imprisonment.

2. The Application is supported by the Affidavit of the Applicant in which she has deposed as follows;

- (i) THAT the Applicant is the daughter of the late Bethuel Kibue Kabebe alias Bethuel Kabui who died on 2.8.1990.
- (ii) THAT the Applicant is unmarried and she lives on her father's estate comprising of the LR KIAMBA/WAGUTHU/183.
- (iii) THAT the Respondent herein filed the Succession Cause in respect of the Estate secretly.
- (iv) THAT she has discovered that the Respondent fraudulently obtained a grant of Letters of Administration of the Estate on 24.4.2001 and the Confirmation was issued on 30.11.2004
- (v) THAT the Applicant has discovered that the Property has already been shared and registered in joint names of her brothers and sisters including the Respondent in equal share and they are planning to transfer the same to 3rd parties.

3. I have considered the submissions filed herein and I find that the grant of letters herein was fraudulently obtained. In the matter of the Estate of Nzuta Mutavi Maandu(deceased) [2016] eKLR and Joseph Moswagi Mabeya & 4 others [2016] eKLR where in both cases, concealment of material facts leading to fraudulent obtaining of grants led to revocation of the said grants. Anor Vs Kennedy Otieno Odeni [2014] eKLR (In the matter of the estate of Doto Owino) Majanja J stated;

“The identities of the beneficiaries and their interests in the estate are material facts and once it is established their interests were concealed, the grant of representation issued is flawed. The petitioner did not disclose the fact that the deceased had other heirs other than himself and his brothers.”

And In the Matter of Joel Ngitu Kingangi (deceased) Cause No 1973 of 1994 Musyoka J stated;

“I am satisfied that the application before me reaches the threshold set by Section 76 of the Law Succession Act for revocation of grants, to the extent that it was not disclosed that the deceased had a daughter, Susan Karugi Gichuki, also deceased, who had

children of her own. The non-disclosure of this information amounted to concealment of facts and a misrepresentation, making the process of obtaining the grant defective. The grant made on 7th December 1994 is therefore liable to revocation.”

4. The circumstances in which a grant may be revoked or annulled are set out in section 76 of the Law of Succession Act as follows:

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.

5. I accordingly annul the grant issued herein and I revoke and set aside the confirmation.

6. I direct that the parties appear in court within 30 days of this date to agree on administrators of Estate failure to do so this Court will appoint fresh Administrators.

DELIVERED, SIGNED AND DATED IN OPEN COURT THIS 5TH DAY OF APRIL, 2019

ASENATH ONGERI

JUDGE OF THE HIGH COURT OF KENYA, NAIROBI