



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

SUCCESSION CAUSE NUMBER 443 OF 2001

IN THE MATTER OF THE ESTATE OF TERESIA WANJIKU NGUGI (DECEASED)

BENSON NGUGI KUGWA.....1ST PETITIONER

ANTHONY NGUGI KUGWA.....2ND PETITIONER

VERSUS

MWNM.....1ST BENEFICIARY

JNN.....2ND BENEFICIARY

RULING

1. The application before court is dated 29th May, 2015. Vide this application, MWNM and JNN seek an order that the Grant of Letters of Administration issued to the two (2) petitioners on the 11th December, 2001 and confirmed on 20th May, 2015 be revoked.

2. They have anchored their application on the supporting affidavit of JNN and on grounds;

1. **THAT** there was material non disclosure of very crucial and important materials at the time the Grant was issued and thereafter confirmed.

2. **THAT** concealment of very crucial and important details in a succession cause is fatal to a Grant and to subsequent confirmation.

3. **THAT** there is a lot of interference and intermeddling of the deceased's assets and that the issuance of the Grant and the confirmation of the same only served to open an avenue for some beneficiaries to disinherit others and to defraud the 1st and 2nd Beneficiaries.

4. **THAT** even before distribution is made of the estate, some of the beneficiaries are already disposing the assets with a view of shutting off some people with beneficial interests.

5. **THAT** the fact that the Grant is being used to dispose of the deceased's assets before transfer by transmission almost renders the Grant inoperative and liable to be revoked.

6. **THAT** the beneficiaries rights or interests in this estate are very important and need to be considered and for this to be done, the Grant should be revoked so that a fresh one can issue to the Petitioners and the 1st and 2nd Beneficiaries and the 1st and 2nd Beneficiaries' interests be factored in.

3. The substance of the application as gleaned from the supporting affidavit and the grounds raised is that there was material non disclosure at the time the Grant was issued and subsequently confirmed. It is the applicant's case that the conduct of the affairs of the estate by the petitioners is such that it exposes the applicant's to fraud and to being disinherited.

4. At the time the Grant was issued the 1st applicant was twelve (12) years old and the 2nd applicant was nine (9) years old.

5. It is urged that the petitioners did not disclose that the two were grandchildren of the deceased. They are children of Cyrus Macharia Ngugi, a son to the deceased and who has been named in this cause as a beneficiary. Copies of birth certificates are exhibited.

6. The applicants aver that they have learnt that their father is intent on selling his inheritance from the deceased yet he ought to hold the same in trust for the applicants.
7. The administrators of the estate are accused of failing to protect the estate from intermeddling.
8. The application is opposed. Anthony Ngugi Kugwa, the 2nd administrator has sworn a replying affidavit in which he avers that the Grant herein was filed with the knowledge of all beneficiaries as per the law established.
9. All beneficiaries signed consent to the confirmation of grant and the entire estate has been distributed to all the beneficiaries and the only remaining issue is the rectification of errors as set out in the application for rectification dated 6th January 2015 to enable each beneficiary obtain registration of their shares.
10. The applicants are children of Cyrus Machira Ngugi and they have no right to inherit from the deceased herein. They never depended on the deceased.
11. The fact that their father is intent on selling his share of inheritance cannot be a basis for revocation of the grant. The applicants should institute independent proceedings against their father.
12. It is admitted that eleven (11) persons among others have bought land from some of the beneficiaries.
13. The application was canvassed by way of written submissions.
14. I have considered the application, the supporting affidavit and grounds relied on. I have had due regard to the response as gleaned from the replying affidavit. I have put into account learned submissions by counsel.
15. Of determination is whether the applicants have met the threshold set by **Section 76 of the Law of Succession Act** for the revocation of the grant issued herein.
16. **Section 76 of the Law of Succession Act** provides;

“S. 76. 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 has ordered or allowed; 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.”

17. The applicants are children of a son to the deceased. That son was included as a beneficiary in the estate of the deceased.
18. The ground of non disclosure can thus not stand. The applicants can only inherit through their father and not directly from the deceased. Their father is now deceased. They need to acquire the necessary representation of their father’s estate to stake their claim.
19. On the ground that the administrators have failed to diligently administer the estate, there is a ready admission by the 2nd administrator at paragraph 20 of his replying affidavit that the allegation is true. He states;

“paragraph 10.

THAT for the avoidance of doubt I wish to state that the following among others are the ones who have purchased various

shares from some of the beneficiaries.

- (i) Kareithi Njongoro
- (ii) Jesse Thuku Chege
- (iii) Mathenge Mugo Daniel
- (iv) Benlevi Kamau Gikurumi
- (v) Makumi Makau
- (vi) Samwel Gichuhi Ng'ang'a
- (vii) Seventh Day Adventist Church – Crater
- (viii) Mtetezi Self-Help Group
- (ix) Onesmus Ngure Macharia
- (x) Kenya Assemblies of God Church
- (xi) Maina Gatiri
- (xii) John Kinyanjui Ndungu
- (xiii) Susan Mugure Ndegwa
- (ix) Simon Wanjohi Ngarenya
- (x) Francis Mureithi
- (xi) David Kimui Muriu”

20. It is not legally tenable for a beneficiary to enter into a sale agreement in respect of part of the estate before the particular property has transmitted to him.

21. For an administrator to acknowledge that some beneficiaries have sold part of the estate before transmission and purport to support such sales is a serious indictment on the administrator.

22. Such an administrator is in total breach of the powers and duties of personal representatives provided under **Section 82 and 83** of the **Law of Succession Act**.

23. By watching over and actually aiding in sale of part of the estate by beneficiaries before actual transmission, the administrators in this matter have exposed some beneficiaries to possible loss and prejudice. The law does not sanction such sales.

24. **Section 45** of the **Law of Succession Act** provides as follows;

“S.45.

(1) Except so far as expressly authorized by this Act, or by any other written law, or by a grant of representation under this Act, no person shall, for any purpose, take possession or dispose of, or otherwise intermeddle with, any free property of a deceased person.

(2) Any person who contravenes the provisions of this section shall -

(a) be guilty of an offence and liable to a fine not exceeding ten thousand shillings or to a term of imprisonment not exceeding one year or to both such fine and imprisonment; and

(b) be answerable to the rightful executor or administrator to the extent of the assets with which he has intermeddled after deducting any payments made in the due course of administration.”

25. Further, **Section 82 (b) (ii)** of the **Law of Succession Act** provides;

“S. 82 (b) (ii) no immovable property shall be sold before confirmation of the grant.”

26. In **RE ESTATE OF JOHN GAKUNGA NJOROGE [2015] eKLR Muriithi J** held;

“A person can only deal with the estate of a deceased person pursuant to a Grant of Representation made to him under the Law of Succession Act. In this regard the jurisdiction of the court to protect the estate of the deceased person is set out in Section 45 of the Law of Succession Act. For the transactions between the applicants and the beneficiaries of the estate of the deceased entered into before the grant of letters of administration to them and before the confirmed grant, the contracts of sale are invalid for offending the provisions of Section 45 and 82 of the Law of Succession Act. Even if the sales were by the administrators, the dealings with immovable property of the estate is restricted by the provision on the powers and duties of personal representatives under Section 82(b) proviso (ii)....”

27. The acts of beneficiaries who have sold part of the estate before their actual shares have legally transmitted to them are void in law, they not having the capacity to enter into any sale agreements in respect of land forming part of the estate.

28. **Lord Denning M.R** in the case of **MACFOY vs UNITED AFRICA CO. [1961] 3 All ER 1169** at **page 1172** had this to say;

“... if an act is void, then it is in law a nullity. It is not only bad, but incurably bad. There is no need for an order of the court to set aside. It is automatically null and void without more ado, though it is sometimes convenient to have the court declare it to be so. And every proceeding which is founded on it is also bad and incurably bad. You cannot put something on nothing and expect it to stay there. It will collapse.”

29. The upshot is that the administrators herein have failed to protect the estate, are in breach of their powers and duties under law.

30. They have rendered the grant useless and inoperative.

31. The court must step in to ensure the administration of the estate in accordance with the law. The continued holding of the grant by the administrators is untenable in the circumstances.

32. I am satisfied that the summons for revocation of grant dated 29th May 2015 is meritable. I proceed to allow the same and make the following orders;

- 1. The Grant issued to Benson Ngugi Kugwa and Anthony Ngugi Kugwa and confirmed on 20th May 2005 is revoked.**
- 2. The beneficiaries to agree on the appointment of two (2) new administrators from among the children of the deceased within thirty (30) days.**
- 3. Such appointed administrators to substitute the current administrators and the grant and the certificate of confirmation of grant be amended accordingly.**
- 4. In default of an agreement either party to be at liberty to apply.**
- 5. Each party to bear its own costs of this application.**

Dated and Delivered at Nakuru this 23rd day of July, 2019.

A. K. NDUNG’U

JUDGE