



REPUBLIC OF KENYA

IN THE HIGH COURT AT EMBU

SUCCESSION CAUSE NO. 331 OF 2007

IN THE MATTER OF THE ESTATE OF LOISE RUNJI THIGA (DECEASED)

FASILIA IRIMBA IRERI.....APPLICANT

VERSUS

BENSON NJIRU.....1ST RESPONDENT

BERNARD MACHARIA.....2ND RESPONDENT

R U L I N G

A. Introduction

1. This ruling pertains to the summons for revocation of grant dated 9th March 2016. It is the applicant's case that the grant for letters of administration issued to the 1st respondent was obtained fraudulently by making of a false statement and by concealment of facts material to the case.
2. The applicant states that the 2nd respondent who is also an administrator of the deceased's estate is stranger to the deceased's estate as he is not related to the deceased and as such was not entitled to apply for letters of administration. The applicant further states that the proceedings to obtain the grant in this case were defective in substance and further that several properties were left out of the proceedings.
3. The 1st respondent deposed a supplementary affidavit in response to the summons for revocation in which he stated that some of the deceased's estate specifically Nthawa/Riandu/2687 measuring 1.20Ha had been left out of the distribution of the deceased's estate and was in danger of being disposed off by the 2nd respondent who had no right to the deceased's property.
4. The 2nd respondent filed a replying affidavit to the summons in which he confirmed that the letters of administration were issued to him and the 1st respondent on the 22/02/2008 and confirmed on the 4/03/2010. He further deposed that the deceased had sold portions of her estate to him and other purchasers prior to her death but failed to transfer the same to the 2nd respondent prior to her death.
5. The 2nd respondent further deposed that the applicant and her siblings had consented to the making of the said grant to the 2nd respondent.
6. Parties were to dispose of the summons by written submissions. However, the record reveals that only the 1st respondent filed submissions.

B. 1st Respondent's Submission

7. It is the 1st respondent's submission that there was mis-representation and mal-administration of the deceased's estate by the 2nd respondent and further that some properties comprising the deceased's estate specifically Nthawa/Riandu/2687, had not been included in the distribution of the deceased's estate.
8. The 1st respondent relies on the case of **In Re Estate of S.T.M. [2017] eKLR** where the court revoked a grant issued to an applicant where some assets of the deceased were not disclosed and the mode of distribution was not agreed by all beneficiaries.
9. The 1st respondent further relied on the case of **In Re Estate of Wahome Mwenje Ngonoro(deceased) [2016] eKLR** where the court held in allowing an application for revocation of grant held that the deliberate failure by the respondents to involve the applicants at the time of filing the proceedings; failing to list them among the beneficiaries or seeking their consent or renunciation amounted to concealment of

facts material to the case.

C. Analysis & Determination

10. The issue before this Court for determination is whether good cause has been shown for revocation of the grant issued and confirmed on 9/03/2016.

11. The threshold for revocation of a grant within the meaning of **Section 76** of the **Law of Succession Act** **must be met before orders for revocation are granted.**

Section 76 provides: -

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.

12. It is the applicant's case that the grant for letters of administration issued to the 1st and 2nd respondents was obtained fraudulently as the 2nd respondent is not related to the deceased and further that the proceedings to obtain the grant were defective in substance and further that several properties were left out of the list of assets. The 1st respondent deposed an affidavit in support of the summons for revocation in which he stated that some of the deceased's estate had been left out of the distribution of the deceased's estate and was in danger of being disposed of by the 2nd respondent who had no right to the deceased's property.

13. In opposition of the summons for revocation, the 2nd respondent deposed that the deceased had sold portions of her estate to him and other purchasers prior to her death but failed to transfer to them the portions they had bought prior to her death. The 2nd respondent further argued that the applicant and her siblings had consented to the making of the said grant to the 2nd respondent. Two of the applicant's siblings have given statements in support of the 2nd respondent's claim and the 2nd respondent has further attached an authority to act and plead by alleged siblings of the applicant.

14. It is this court's considered view that the applicant ought to have adduced evidence to support the allegation of fraud that the respondents misrepresented specific factual material with the intention to deprive them of their interest in their late mother's estate. The onus of proof was upon the applicants to lead evidence on the intent of the respondents. I do note that both the applicant and 1st respondent gave their consent to the making of grant of administration to the 2nd respondents in Form 38 and in the affidavit in support of petition for letters of administration intestate.

15. The test under Section 76 of the Law of Succession Act must be applied herein. The alleged disagreements over whether the deceased sold part of his estate to the 2nd respondent is important to these proceedings. I am aware that this court does not have jurisdiction to determine the validity or enforceability of the land sale agreements save for the Environment and Land Court which is mandated to make such determinations.

16. It is noted from the chief's letter that the 2nd administrator/ respondent is described as children of the deceased who rank equally with their siblings in seeking for grant of letters of administration under Section 66 of the Law of Succession Act. I note that the applicant is calling the administrator a strange to confirm this, his name does not appear in the chief's letter as a child of the deceased.

17. One Dickson Ngari Nthiga, a son of the deceased stated that the family consented to the 2nd respondent being granted letters of administration alongside their brother the 1st respondent. The reason then was that the 2nd respondent bought land from the deceased. For a stranger to be accorded such a role is contrary to Section 66 of the Act and should not be encouraged.

18. The 2nd administrator is also accused of intermeddling with the estate of the deceased by selling off part of it to 3rd parties which is in breach of his legal duty as an administrator.

19. Among the non-disclosures by the two administrators is that one parcel of land LR. Nthawa/Riandu/2687 was not included in the list of assets of the deceased which can be confirmed from the list of deceased's assets. The 2nd administrator has filed an application for rectification of grant in order to benefit from the asset. Section 74 of the Act under which the application is brought does not cover fundamental changes in the grant save for correction of names or description of the property. This approach is not likely to work for the 2nd respondent.

20. The 2nd respondent states that his name was included in the grant without his consent and concedes that he is a stranger to the family of the deceased. It is not on record that the 2nd respondent ever raised an objection to that unauthorised inclusion. He states that he was a purchaser of deceased's land before her death.

21. The 1st administrator failed to disclose to the court that his counterpart was a stranger in the estate of the deceased. Although some of his siblings gave consent to the inclusion, this act was contrary to the law.

22. I reach a conclusion that the non-disclosure by the administrators of facts that are material to this cause and the inclusion of the 2nd respondent as a co-administrator and the exclusion of some of the deceased's assets from the proceedings falls squarely among the grounds set out under Section 76 of the Act.

23. For the foregoing reasons, I find this application merited and allow it in the following terms: -

a) That the grant issued on 30/06/2015 is hereby revoked.

b) That the applicant Fasilia Irimba Ireri and Njagi Njuranio are hereby appointed administrators of the estate herein.

c) That the administrators do apply for confirmation of the grant within sixty (60) days and to include all the assets of the deceased.

d) That any transactions under the revoked grant are hereby declared null and void.

e) That each party to meet their own costs of this application.

24. It is hereby so ordered.

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

F. MUCHEMI

JUDGE

In the presence of: -

Mr. Okwaro for Muthama for Applicant

2nd Respondent present