



REPUBLIC OF KENYA

IN THE HIGH COURT AT ELDORET

SUCCESSION CAUSE NO. 304 OF 2001

IN THE MATTER OF THE ESTATE OF KANGETHE MWEGA (DCD)

MARY WAMBUI KIBUNYAPETITIONER

VERSUS

PETER KARIUKI.....1ST RESPONDENT

JAMES NGUGI2ND RESPONDENT

RULING

What is before the court is the applicant's summons for substitution dated 26th November 2018 for orders that the respondents and *Teresiah Mukuhi* substitute the administrator *Joseph Njuguna Mugethe*. The application is based on the grounds that the administrator is deceased. Further, that days before his death the applicant herein had filed summons for revocation of the grant that had been made to the administrator on grounds of concealment of material facts and lack of consent from other beneficiaries. The summons for revocation has been pending for some time and all the other beneficiaries have agreed to the substitution.

APPLICANT'S CASE

The applicants filed an affidavit in support of the application and also filed submissions on 20th June 2019.

The applicant contends that she is a beneficiary to the deceased by virtue of being his daughter. The grant was obtained without the consent of the beneficiaries. Further, the administrator did not inform the court that he was not the only beneficiary to the estate. After the death of the administrator, his sons applied and were appointed as administrators to the estate.

The applicant submitted that the court allows the application as there is a pending revocation of grant application which is yet to be heard, and determines whether the applicant and other beneficiaries stand to be disinherited from their fathers' estate.

Following the death of *Joseph Njuguna Mugethe*, the applicant letters of administration stood revoked by operation of law. Justice Ibrahim, in his ruling of 26th October 2006 stated that if any beneficiary or other party wished to act for the estate or take any action an administrator had to be appointed to replace the deceased. There is need for substitution to enable the

prosecution of the application for revocation. The applicant cited the case of in **Re Estate of the Late Havaton Kavava Mainji (2019) eKLR.**

The applicant submitted that despite the objection to the application by the respondents on the basis that they do not rank in priority and that the estate has been distributed, the sole purpose of the application is so that she can prosecute the application for revocation on the grounds that it was obtained fraudulently. She is entitled to prosecute the application. She cited the case of in **Re Elizabeth Wanjiru Waweru (Deceased) 2016 eKLR.**

She relied on the Case of in **Re Mugo Njagi (Deceased) 2015 eKLR** and submitted that as per *Section 76* of the *Law of Succession Act* there is no time limitation on an application for revocation.

The applicant submitted that in the interests of justice the court should substitute the administrator with *Teresiah Mukuhu* who issued her consent to be appointed and ranks in priority as provided in *Section 66* of the *Act*. She acknowledged that the court could not impose administration on the respondents and conceded that they could be excused from the proceedings.

RESPONDENT'S CASE

The respondents filed their submissions on 20th July 2019. They submitted that they are in the 2nd degree of consanguinity and therefore do not rank in priority over anyone named. That the applicant made such an application on 17/8/2006 and it was dismissed for lack of merit.

The estate had one parcel of land which was sold after the title had been transferred to the name of the late *Joseph Njuguna Mugethe* via succession grant. He therefore died after administering the estate. The respondents do not consent to being administrators in the estate of the deceased which is a non-existent estate.

The respondents are joint administrators in the estate of the late *Joseph Njuguna Mugethe* and not *Kangethe Mwega* (Deceased). They have not received consent from persons of higher or equal priority to administer the estate of the deceased. Substitution of the respondents herein as administrators will conflict with their duties as administrators of the estate of the late *Joseph Njuguna Mugethe*.

The proceeds of the administration were transferred by way of sale and the title obtained thereto is indefeasible and has passed on to third parties.

There is no remedy in succession cause as this honourable court held on 26/1/2007, the applicant's claim can only be the subject of other proceedings. If there is any other part of the estate of the deceased remaining the surviving beneficiaries should apply for administration.

The grant of administration granted to the late *Joseph Njuguna Mugethe* lapsed as the grant is personal to the grantee and cannot be transferred or inherited. Further, the same stood lapsed upon his death and the estate having been administered fully, the same was wound up and nothing remains to be administered.

The respondents cited *Section 93* of the *Law of Succession Act* and submitted that the proceeds of the administration having been transferred by way of sale, the title obtained thereto was indefeasible. Pursuant to the court order of 26/1/2007 the application herein is null and void as the court ruled that no step can be taken in these proceedings until another administrator is appointed and none has been appointed.

The respondents have not sought a grant over the estate and the applicant ought not coerce them to administer the estate devoid their willingness. They relied on the case of *Kisumu CACA No. 306 of 1998 – Florence Okoth Nandwa & Another v John Atemba Kojwa*. They also cited the case of In the estate of *Mwangi Mugwe alias Elaza Ngware (Deceased), Nairobi HCSC No. 2018 of 2001* on substitution of an administrator. The application ought to be dismissed with costs.

ISSUES FOR DETERMINATION:-

(1) WHETHER THERE EXISTS ANY ASSETS THAT COMPRISE THE ESTATE OF THE DECEASED

The respondents contended that the estate of the deceased had already been fully administered by the time of the death of the administrator. The property had been transferred to a third party and the proceeds were distributed and the estate wound up. What then would the administrator's purpose where there exists no estate? I find that there is no estate to be administered therefore the application is overtaken by events.

(2) WHETHER THE APPLICATION FOR SUBSTITUTION IS MERITED

The administrator to the estate of the deceased passed away on 26th August 2006.

Section 76 of the *Law of Succession Act* 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—

(e) that the grant has become useless and inoperative through subsequent circumstances.

In the matter of the estate of *Mwangi Mugwe alias Eliaza Ngware (Deceased), Nairobi HCSC No. 2018 of 2001* the court held;

“The appropriate procedure should be an application under section 76 of the Law of Succession Act for revocation of grant on the ground that it had become useless and inoperative following the demise of its holder.”

In the absence of an administrator the proposed administrator should therefore have initiated an application for letters of administration. Further, the estate was wound up therefore there is no estate to be administered.

If there are other properties that belongs to the deceased, the applicant and interested party are at liberty to take out letters for administration on those properties. In the present cause, there is no asset that comprises the estate of the deceased. Given that the administrator passed away, the grant stands revoked by operation of law and therefore the purpose of the application has been overtaken by events. In the premises, the application fails with cost to the Respondents.

S. M GITHINJI

JUDGE

DATED, SIGNED and DELIVERED at ELDORET this 9th day of October, 2019.

In the presence of:-

Mr. Kandie holding brief for Mrs. Kinyanjui for applicant

Mr. Kipruto holding brief for Mr. Magare for the Respondent.

Ms Abigael - Court clerk