



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERICHO

SUCCESSION CAUSE NO.3 OF 2017

IN THE MATTER OF THE ESTATE OF:

JOSEPHINE AUMA MAENDE.....DECEASED

BETWEEN

CLEOPHAS MAKOKHA MAENDE.....PETITIONER/RESPONDENT

AND

STELLA WATENDE MAENDE.....OBJECTOR/APPLICANT

RULING

1. Before me is an application for revocation/annulment of grant dated 30th March 2016 filed by Stella Watende Maende against Cleophas Makokha Maende through counsel Ms Bett & Co. Advocates. The application was filed under section 76 (e) and 73 of the Law of Succession Act (Cap.160).

2. The grounds of the application are that the proceedings to obtain the grant were defective in substance; that the grant was obtained fraudulently by making false statements and by concealing to the court something material to the case; and that the person to whom the grant was made had failed to proceed diligently with the administration of the estate of the deceased as he has treated the assets as his own property to the detriment of the other dependents of the deceased.

3. The application was filed with a supporting affidavit sworn by the applicant/objector Stella Watende Maende who deponed that she was the administrator in Kakamega High Court Probate & Administration Cause No.327 B of 2015 which was pending determination as executors with Caleb Masakhwe Olunga of the will of the deceased dated 8th July 2014, and that in disregard of the said will Cleophas Maende Makokha, her father, who was present during the reading of the will filed a petition for letters of administration and listed properties that were subject of the will and properties which did not belong to the deceased, and left out minors Samwel Nyongesa and Nicole Auma (grandchildren of the deceased herein) from the list of beneficiaries.

4. In response to the application, the petitioner/respondent Cleophas Makokha Maende filed an affidavit, which he swore on 9th January 2017. It was deponed in the said affidavit that the deceased was the wife of the petitioner (Cleophas M. Maende) and the objector a daughter, and that the deceased did not make a will as alleged by the applicant/objector, and that the objector chose to file a petition for letters of administration at Kakamega knowing fully well about the existence of this present petition; that the petitioner herein was aware of his two named grandchildren; and that it was infact the objector who had intermeddled with the estate of the deceased by taking and misusing money therefrom.

5. The application proceeded by way of filing written submissions. The applicant/objector's counsel Bett & Co. Advocates filed their submissions on 30th January 2019, while the respondent's counsel Nasike Wafula Associates did not file written submissions and also failed to attend court though notices were issued to them.

6. This is an application for revocation/annulment of grant of letters of administration. Section 76 of the Law of Succession Act (cap.160) confers on this court jurisdiction to revoke or annul any grant of letters of administration whether confirmed or not either on application by any interested party or on the court's own volition. The grounds on which a grant of letters of administration can be revoked or annulled by the court are listed under the section. I note that all the three grounds listed in the present application are grounds on which letters of administration may be revoked or annulled by the court.

7. The burden is on the applicant for revocation or annulment of grant to demonstrate to the court on the balance of probabilities, that any of the grounds listed have been proved.

8. There are two petitions herein, one filed at Kitale and then forwarded to Kericho. The other petition for letters of administration was filed in Kakamega and the file was also forwarded to Kericho. The petitions are Kitale Succession Cause No.129 of 2015 filed on 9th June 2015 – by Cleophas Makokha Maende as petitioner. It was prosecuted by Wasike Wafula & Co. Advocates. Before a notice was published in the Kenya Gazette and before a grant of representation of letters of administration was issued, on 28th January 2015 confirmation of grant was sought in that cause. On 16th June 2016 (wrongly stamped by the court as 2015), the objector herein Stella Watende Maende filed her objection in that cause through M/s Bett & Co. Advocates.

9. However, before the objection was heard and determined, a certificate of grant of letters of administration dated 5th October 2016 was issued and signed by Justice H. K. Chemitei at Kitale. Thereafter, the file was sent to Kericho and became Kericho High Court Succession Cause No.3 of 2017, the present file. That explains the file at Kitale.

10. The 2nd file was Kakamega High Court Succession Cause No.327 “B” of 2015 filed on 6th October 2015, where the petitioner was called Caleb Masakhwe Olunga. In this file, an alleged will of the deceased is annexed in which the executors are Caleb Masakhwe Olunga and the objector Stella Watende Maende. It was not and so far, no Grant of Probate has been issued. This file was also brought to Kericho.

11. Though the objector is listed as one of the two executors of the will, she did not apply to be such executor in Kakamega High Court Succession Cause No.327B of 2015, instead only Caleb Masakhwe Olunga one of the two listed executors of the deceased’s will, filed the application for Probate. That Succession Cause has not been Gazetted yet, as there was already filed the Kitale Cause No.129 of 2015 herein which had already been Gazetted.

12. That said, in my view, the objector as an interested party and beneficiary in this estate has shown that the issuance of the Letters of Administration herein to her father Cleophas Makokha Maende was an error, as there were important matters, and information, including the existence of the will which had not been disclosed. In addition, though an objection had been filed by Stella Watende Maende and was yet to be heard and determined, Letters of Administration were issued. Those two reasons are adequate irregularities to justify nullification of the Grant of Letters of Administration, as it was defective *ab initio*.

13. I thus allow the application for revocation/annulment of grant and order as follows:-

1. The Grant of Letters of Administration herein issued to Cleophas Makokha Maende is hereby annulled.

2. I consolidate the Kitale Succession Cause No.129 of 2015 and Kakamega High Court Succession Cause No.327B of 2015, and they will all become Kericho High Court Probate & Administration Cause No.3 of 2017.

3. The next step will thus be to hear and determine the issue of the validity of the will, and all family members will have to be informed.

4. I will give a mention date for the cause hereafter for directions.

Dated at Kericho this 7th day of October 2019.

GEORGE DULU

JUDGE