



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

SUCCESSION CAUSE NO. 2208 OF 2008

IN THE MATTER OF THE ESTATE OF JACKSON WACHIRA MIANO (DECEASED)

AGNES KATTO NJOROGE.....APPLICANT

VERSUS

ALICE WAKINI WACHIRA.....1ST RESPONDENT

FRANCIS MAINA WACHIRA.....2ND RESPONDENT

ESTHER WAMBUI WACHIRA.....3RD RESPONDENT

RULING

1. By way of Summons for Revocation or Annulment of Grant, dated 1st April, 2019, the Applicant seeks the revocation or annulment of the letters of administration issued in respect to the Estate of Jackson Wachira Miano (deceased) granted to Alice Wakini Wachira, Francis Maina Wachira and Esther Wambui Wachira. The applicant prayed for a new grant for letters of administration of the deceased's estate to be issued to her.

2. The application is premised on the grounds that, the grant was fraudulently obtained by the administrators through concealment from court of material facts and misrepresentation. The applicant swore an affidavit in support of the summons dated 1st April, 2019. She deponed that she was a wife to the deceased, having been married in 1998 and lived as husband and wife with him in their matrimonial home in Kayole until his demise in 2008. She presented a letter from the area chief indicating that she was the fourth wife to the deceased herein.

3. The applicant averred that the respondents herein filed a petition for letters of administration on 15th October, 2015 without her knowledge and consent. 3rd October, 2017, the letters of administration intestate were issued to the respondents. She was apprehensive that the respondents who are the administrators of the estate intend to disinherit her and yet she is a wife and beneficiary of the deceased. She asserted that the respondents had not involved her in the administration of the estate ever since they evicted her from her matrimonial home and had been collecting rent therefrom. She claimed that the administrators continue to embezzle estate property by failing to comply with orders to provide audited accounts.

4. The respondents did not file a response to the summons for revocation of grants. The court gave directions for the matter to proceed by way of written submissions. The applicant through her counsel submitted that the respondents had deliberately omitted the applicant's name from the petition despite her being a wife and a beneficiary to the deceased. It was further submitted that the respondents also omitted many of the deceased's assets in an effort to mislead the court. Counsel relied on the case **of Re estate of Makumba Khamba Malala (deceased) [2010] eKLR** and **Lucy Wanjiru Kibaba & another v Lucy Wanjira Muchene [2013] eKLR** in support of the applicant's case.

5. I have considered the pleadings, the submissions by counsel and the cases relied upon in support of the summons for revocation of grant. The issue that arises for determination is whether the grant of representation was fraudulently obtained by the administrators through concealment from court of material facts.

6. Section 76 of the Succession Act provides that;

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 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.

7. The letters of administration sought to be revoked were issued on 3rd October, 2017 to Alice Wakini Wachira, Francis Maina Wachira and Esther Wambui Wachira. The applicant avers that the letters of administration in question were obtained fraudulently through concealment of material facts. It is her case that the Respondents filed the petition without her involvement or consent. Further, that they completely omitted her name from the list of beneficiaries and yet she is a wife to the deceased and that they did not include some of the deceased's assets available for distribution. The respondents opted not to file a response nor submit on the summons for revocation.

8. Rule 26 of the Probate & Administration Rules makes provisions for the issuance of notice to interested parties during the process of obtaining letters of administration. It states:-

(1) Letters of administration shall not be granted to any applicant without notice to every other person entitled in the same degree as or in priority to the applicant.

(2) An application for a grant where the applicant is entitled in a degree equal to or lower than that of any other person shall, in default of renunciation, or written consent in Form 38 or 39, by all persons so entitled in equality or priority, be supported by an affidavit of the

Applicant and such other evidence as the court may require.

From the issues raised in her summons for revocation of grant, the Applicant is calling upon the Court to determine whether she is a wife and therefore beneficiary to the estate of deceased. This question can only be answered after the parties have given evidence in the protest to the confirmation of grant already on record.

9. At this stage this court can only determine whether the applicant has established a prima facie case that she is a beneficiary of the deceased's estate. In this case, according to the Chief's letter dated 24th September, 2008 a dispute arose after the deceased's demise. Four women including the applicant and the 1st respondent were in dispute over the deceased's property in Kayole. It is alleged that two of the women moved back to Uganda where they were citizens. The applicant and the respondents have since then been in court litigating on the deceased's estate.

10. In addition, by a ruling delivered by Lady Justice Jeanne Gacheche, on 24th October, 2008 the learned Judge in granting an order of injunctive relief to the applicant noted that the letter from the local area chief indicated that she had been residing with the deceased prior to his death. A perusal of the Petition for letters of administration intestate of the deceased dated 12th October, 2015 indicates that the deceased was survived by one wife and four children. The applicant is not included in the list of survivors.

11. However, the evidence presented by the Applicant in the summons for revocation of grant is not sufficient to warrant the revocation or annulment of grant without granting the parties an opportunity to cross-examine witnesses. The question of whether she is a wife or not would require proof and is a matter of evidence to be adduced at a later stage subject to the hearing and determination of the protest to the confirmation of grant.

12. **Rule 73 of the Probate and Administration Rules** grants this court inherent powers to issue orders necessary to meet the ends of justice or to prevent abuse of the process of court. The Respondents did not file a response to the summons for revocation of grant. I have duly considered the application and the submissions of counsel. Section 47 of the Law of Succession Act gives this court a wide discretion to entertain any dispute and make orders that may be expedient. The Section reads:

“The High Court shall have jurisdiction to entertain any application and determine any dispute under this Act and to pronounce such decrees and make such orders therein as may be expedient.”

13. It must be noted that the object of the court is to uphold substantive justice. Upon considering the facts of the case against the principles outlined in the foregoing, I dismiss this Application and direct that the Applicant prove her case in the protest she has filed.

SIGNED DATED AND DELIVERED IN OPEN COURT THIS 9TH DAY OF DECEMBER 2019.

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L. A. ACHODE

HIGH COURT JUDGE

In the presence of Advocate for the Applicant

In the presence of Advocate for the Respondents