



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

SUCCESSION CAUSE NO. 605 OF 2014

IN THE MATTER OF THE ESTATE OF CECELIA M'NAITURI Alias CECELIA W/O NAITURI (DECEASED)

DAVID GIKUNDA

SARAH NKATHA

HARRIET KANANA M'IKIARA.....APPLICANTS

-VS-

M'MBUI M'WAITURI.....PETITIONER

R U L I N G

1. This succession cause relates to the estate of **Cecilia M'Naituri (deceased)** who died on 20th January, 1979 at Ntunguri Meru. On 13th November, 2014, **M'Mbui M'Waituri ("the petitioner")**, petitioned for Grant of Letters of Administration intestate, which were issued to him on 12th March, 2015.

2. By an application dated 23rd November, 2017, the applicants applied for the revocation of the grant pursuant to **Section 76 (d) of the Law of Succession Act and Rules 44 and 73 of the Probate and Administration Rules**.

3. The application was supported by the grounds on the face of the Summons and on the affidavit sworn by the applicants on 27th November, 2017. The applicants contended that the petitioner had not been diligent in the administration of the estate, that it was now over 2 years since the grant was issued to the petitioner but he had not applied for the confirmation thereof. The applicants further contended that the petitioner was not a proper person to administer the estate since he had not complied with the provisions of the Law regarding administration of estates. That he was intermeddling with the estate as he was bringing surveyors to the estate property to subdivide the same without consulting beneficiaries.

4. On 5th April 2018, the court directed that the application be heard by way of affidavits and written submissions. However, when the matter came up for mention on 9th April 2018 to confirm compliance of those orders, the petitioner had neither filed any Replying Affidavit nor filed any submission.

5. It was submitted for the applicants that the petitioner had not been diligent in the administration of the estate but that he had been intermeddling with the same. That he had not denied or challenged this statement of fact. Consequently, the applicants urged the court to revoke the grant.

6. I have carefully considered the affidavit on record as well as submission of learned Counsel for the applicants. It was contended by the applicants that the petitioner had not been diligent in the administration of the estate; that it was over 2 years since the grant was issued to the petitioner yet he had not applied for the grant to be confirmed. That instead, he was busy intermeddling with the estate by bringing surveyors onto the property to subdivide the same without consulting the beneficiaries. All these contentions by the applicants remained uncontroverted as the petitioner did not respond to the same despite having been given adequate time to do so.

7. **Section 76 of the Law of Succession Act** provides the circumstances under which a grant can be revoked. **Subsection (b)** thereof 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—

(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”

8. A grant may be revoked if the person named in the grant has failed to apply for confirmation or to proceed diligently with the administration of the Estate. (See - **Matheka and Anor –v- Matheka [2005] 1 KLR pg 456**). In the instant case, it is not in dispute that the grant was issued to the petitioner on 12th March, 2015. The applicants contention that the petitioner was not diligent in the administration and distribution of the estate was uncontroverted. It is over 2 years since the grant was granted to the Petitioner. He has not applied for the confirmation thereof.

9. Taking into totality all the circumstances of this case. I am satisfied that the applicants have made a sufficient case for revocation of grant pursuant to **section 76 of the Law of Succession Act (supra)**. Accordingly, the application dated 23rd November 2017, for revocation of grant is merited and I allow the same.

10. I appoint **DAVID GIKUNDI, SARAH NKATHA and HARRIET KANANA M’IKIARA** as the joint administrators of the estate of the deceased. Leave is granted to them to forthwith file the application for confirmation.

11. This being a succession matter there will be no order as to costs.

DATED and DELIVERED at Meru this 7th day of June, 2018.

A. MABEYA

JUDGE