



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT ELDORET

P&A NO. 34 of 2012

IN THE MATTER OF THE ESTATE OF ELIZABETH CHEBOO (DECEASED)

JEMIMA JEBICHIY MUREI.....APPLICANT

-VERSUS-

DORCAS CHELIMO.....1ST RESPONDENT

ANN JELAGAT.....2ND RESPONDENT

RULING

[1] This Ruling is in respect of the Summons for Revocation of Grant dated **8 February 2016**. The same was filed under **Section 76** of the **Law of Succession Act, Chapter 160** of the **Laws of Kenya** and **Rule 73** of the **Probate and Administration Rules** for orders that:

[a] Spent

[b] A temporary injunction be issued restraining the Respondents from transferring, charging, selling or otherwise interfering with the register in respect of land titles numbers ELDORET MUNICIPALITY BLOCK 24 (KIPKENY) 1540, NANDI/KIPSIGAK/1049, and NANDI/KAIBOI/209 and also restraining the respondents from transferring the assets forming the estates of the deceased pending the hearing and determination of this application *inter partes* and thereafter pending the hearing and determination of Prayer (c) of the application;

[c] The confirmed grant of letters of administration to **Dorcac Chelimo** and **Ann Jelagat** made on the **19 February 2015** be revoked and annulled and the application for confirmation of the grant be heard *de novo*;

[d] Costs be awarded to the applicant.

[2] The application was based on the grounds that the grant was obtained fraudulently, by the making of false statements and by concealment from the court of material facts; and that the proceedings were therefore defective in substance. The application was also premised on the averments set out in the Affidavit of the Applicant, **Jemimah Jebichiy Murey**, sworn on **8 February 2015** in support of the Summons for Revocation of Grant. She averred that the proceedings to obtain the grant were defective in substance because the Respondents forged, or caused to be forged, her signature on Form 37; and that she could not have attended court on **9 February 2015** because she was in a meeting at **Kapchemosin Primary School** in Nandi County. Hence, it was her contention that someone must have impersonated her in connection with the court attendance of **9 February 2015**. She added that the Respondents obtained the grant by concealing material facts to the Court, namely, that there was a dispute on the distribution of the Estate of the Deceased. She complained that the Respondents have taken the lion's share of the estate, and there exists a real danger that they could go ahead and dispose of the properties comprising the Estate to her detriment.

[3] The Respondents opposed the application and, to that end, filed a joint affidavit sworn on **3 March 2016**. They averred that the Application is vexatious and malicious and is only meant to waste the Court's precious time. It was their averment that they gave the Applicant **Form 37** for her signature, and that she returned the document to them duly executed; and therefore her allegations that her signature was forged is unfounded. They further averred that the Applicant was duly notified of the proceedings for confirmation of grant but that, on various occasions, she failed to attend court; and that she therefore had no reason to complain about the proceedings of **9 February 2015**.

[4] According to the Respondents, all the beneficiaries have since been given their respective shares as per the Distribution Schedule, and that the Applicant has in the process inherited all that piece of land known as **Nandi/Kaboi/209**, measuring 21 acres which she is in full occupation and use of; and that the Applicant is, in the circumstances, guilty of inordinate delay. They annexed to their Replying Affidavit copies of the Grant of Letters of Administration Intestate issued on **9 July 2012**, Consent to Mode of Distribution that was duly signed by the Beneficiaries on **9 June 2014** and Title Deed for **LR No. Eldoret Municipality/Block 24 (Kipkenyo)/540** to buttress their averments.

[5] The Applicant refuted the Respondents' averments in her Further Affidavit sworn on **12 March 2016**. She denied the allegations that she deliberately failed to attend court, contending that the Respondents have never informed her of any hearing dates for the confirmation of the grant. She exhibited, as an annexure to her Further Affidavit, Minutes of a School Management Committee meeting that was allegedly held on **9 February 2015**, showing that she was present at that meeting, and averred that she could not have been present before the Court on the same date when the grant was confirmed. She accordingly reiterated her contention that her signature on the Consent Form was forged and availed a copy of a Bank Slip bearing her known signature for comparison.

[6] It was further the contention of the Applicant that the Respondents had previously benefitted from the Estate of the Deceased by fraudulently selling part of the property before confirmation of grant for which they did not account. Thus, it was her contention that the mode of distribution adopted by the Respondents is highly unfair and inequitable as the same had not taken into account the interests of the larger family and the value of each of the different pieces of land comprising the Estate; and that it was only fair and just that the orders sought be granted.

[7] Thus, having carefully perused the documents filed herein and the proceedings to date, and given due consideration to the submissions made herein by Learned Counsel for the parties, **Ms. Awinja** for the Applicant and **Ms. Karuga** for the Respondents, there appears to be no dispute that the Applicants are the daughters of the Deceased, **Elizabeth Cheboo**, while the Applicant is her daughter-in-law. According to the Affidavit in Support of the Petition, which was filed herein on **7 February 2012**, the Deceased died intestate and left the following dependants:

- [a] Dorcas Chelimo - Daughter (the 1st Respondent)
- [b] Ann Jelagat - Daughter (the 2nd Respondent)
- [c] Jemima Jebichiy Murei - Daughter in law (the Applicant)
- [d] Hellen Jepkoech Maiyo - Daughter in law

[8] There is further no dispute that a Grant of Letters of Administration Intestate was issued herein on to the two Respondents as the joint administrators. This was done on **9 July 2012**, and the said Grant was thereafter confirmed on **9 February 2015**. The Applicant thereafter moved the Court for revocation of the Grant under **Section 76** of the **Law of Succession Act**, which 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 false statement or 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 material particular; or**
 - iv. **That the grant has become useless and inoperative through subsequent circumstances."**

[9] Clearly therefore, the Applicant, having approached the Court under **Section 76(a) and (b)** of the **Law of Succession Act**, was under obligation to demonstrate that:

- [a] the proceedings to obtain the grant were defective in substance; and

[b] that the grant was obtained fraudulently by the making of a false statement or concealment from the court of something material to the case.

[10] There appears to be nothing either in the Supporting Affidavit or the Further Affidavit of the Applicant that impugns the process employed herein in obtaining the Grant of **9 July 2012** or the Certificate of Confirmation. It is plain from the record that all the requisite documents were filed and, it was only upon the Court being satisfied as to compliance that the grant was issued; and thereafter the Certificate of Confirmation. Indeed the record shows that on **7 April 2014** when the grant was due for confirmation, the matter was stood over to **13 October 2014** because neither the Applicant nor **Hellen Jepkoech Maiyo** were in attendance. Similarly, on the **10 November 2014**, confirmation was deferred on account of non-attendance by the Applicant and **Hellen Jepkoech Maiyo**. Finally on **9 February 2015**, the record shows that the presence of the Applicant and the two Respondents was noted, and that although **Hellen Jepkoech Maiyo** was absent, the Court considered that she had signed the Consent to the Mode of Distribution. Thus, the Court was satisfied that the interests of all the beneficiaries had been taken care of, and accordingly proceeded to confirm the grant. I find nothing in that process to show that the proceedings to obtain the grant were defective in any way.

[11] As to whether that the grant was obtained fraudulently by the making of a false statement or concealment from the court of something material to the case, one of the contentions of the Applicant was that her signature on the Consent form was forged. However, forgery or fraud are not allegations to be made lightly, for the standard of proof is high. In **Central Bank of Kenya Limited vs. Trust Bank Limited & 4 Others, NAI Civil Appeal No. 215 of 1996**, the Court of Appeal observed thus:

"The Appellant has made vague and very general allegations of fraud against the Respondent. Fraud and conspiracy to defraud are very serious allegations. The onus of prima facie proof was much heavier on the Appellant in this case than in an ordinary civil case."

[12] The question to pose is whether the Applicant has discharged that burden of proof to the requisite standard. All she did was to exhibit a photocopy of a Bank Slip to her Further Affidavit to show that her signature thereon is different from what appears on the Consent Form. She urged the court to make a conclusion, simply by comparing the documents, that the signatures are different. The Respondents on the other hand were of the posturing that the Consent Form was given to the Applicant to sign and that she went with it, signed it and returned the same to the Respondents duly signed. They contended that they believed the document to have been duly executed by the Applicant. Hence, having given careful consideration to the rival positions, I find no reason for doubting the Respondents, granted that they did not seek to altogether exclude the Applicant and **Hellen Jepkoech Maiyo** as their sisters in law from benefitting from the Estate of the Deceased.

[13] Additionally, the court record does show that the Applicant was in attendance on **9 February 2015** as the wife to **Mathew Kibet**, a son to the Deceased. I have no doubt that, had she been absent as contended by her, the Court would have noted this as it had done in previous instances, as well as in the case of **Hellen Jepkoech Maiyo** on **9 February 2015**. The duty of the Court is to do justice and to make accurate record of its proceedings. That is why, by dint of **Section 84** of the **Evidence Act, Chapter 80** of the **Laws of Kenya**, the Court is justified in making a presumption as to the genuineness of such proceedings and to conclude that they are a true reflection of what transpired on the date in question. Against that touchstone, I am prepared to find and hold, that it is the Applicants version that is of doubtful credibility.

[14] Finally, although the Applicant contended that the distribution was not equitable, and that the 21 acres land she was given is not as valuable as what the other beneficiaries received, there is no basis for that averment. No valuation report or such other evidence was availed to show the respective values of the pieces of land that each beneficiary received. There is therefore no valid reason for the Court to conclude that the Respondents received "the lion's share" of the Estate as the Applicant would want the Court to believe, noting that she was also included as a beneficiary in respect of the two Standard Chartered Bank Accounts and the National Co-operative Housing Union Ltd shares.

[15] In the result, my finding is that the Applicant has failed to show justifiable cause for the revocation of the Grant issued herein to the Respondents. Accordingly, her application dated **8 February 2016** fails and is hereby dismissed, but with an order that each party shall bear their own costs of the application.

It is so ordered.

DATED, SIGNED AND DELIVERED AT ELDORET THIS 13TH DAY OF JULY 2018

OLGA SEWE

JUDGE