



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

SUCCESSION CAUSE NO. 288 OF 2004

IN THE MATTER OF THE ESTATE OF SOLOMON M'KACHUKI, DECEASED

ELIZABETH MUKOMBIRO.....PETITIONER

-VERSUS-

LAWRENCE MUKARIA M'ACHUKI.....OBJECTOR

RULING

[1] Before me is Summons for Revocation of Grant dated 25th January 2018. It seeks:-

1. Revocation of Grant issued to Elizabeth Mukombiro on 11th April 2005 and confirmed on 21st April 2005.
2. Appointment of LAWRENCE MUKARIA M'ACHUKI to replace the petitioner who is deceased; and
3. An inhibition to be registered in **L.R NO ITHIMA.ANTUAMBUI/20**.

I note that the Applicant had earlier on filed similar application dated 3rd September, 2014 save he had asked the court to appoint Margaret Ncororo as the new administrator. That notwithstanding, I will determine the current application on its merits.

[2] The application is premised on grounds set out in the application, the affidavit in support as well as the submissions filed by the Applicant. It has been argued by the Applicant stated *inter alia*:-

- a. That he is the son of the deceased and the petitioner is his step-mother.***
- b. That the petitioner secretly filed these proceedings without involving him.***
- c. The proceedings to obtain the grant were defective in substance and was meant to defraud and disinherit him.***
- d. The petitioner passed away on 20th May 2013.***
- e. That the deceased shared some of his properties to his children except the Applicant and his brother, one Charles Ntongai as follows:-***

- 1. L.R NO ITHIMA.ANTUAMBUI/3596 to Severina Kathure.***
- 2. L.R NO ITHIMA.ANTUAMBUI/3595 to Margaret Ncororo.***
- 3. L.R NO ITHIMA.ANTUAMBUI/3593 to Susan Karambu M'Achuki.***
- 4. L.R NO ITHIMA.ANTUAMBUI/3594 to Lucy Kainda.***
- 5. L.R NO ITHIMA.ANTUAMBUI/362 to Murungi Murabua- husband to his sister.***

[3] The Applicant stated that, contrary to the averments by Amos Karani M'Achuki, he is the one who occupies and cultivates **L.R NO ITHIMA.ANTUAMBUI/20**. He was surprised that the said Amos dared to lie that they live on the said land. In any case, he stated that Amos

is a grandson and not a son of the deceased; his mother is Lucy Kainda, daughter of the deceased.

[4] The application was opposed by Amos who filed an affidavit on 19th December, 2016. He claimed that the suit land was left to his mother and that they live on the said land. He claimed that the Applicant was given land by the deceased and that is where he lives. He beseeched court to reject the request by the Applicant and instead appoint him the personal representative of his deceased mother- the petitioner.

DETERMINATION

[5] I will not pretend to re-invent the wheel. Section 76 of the Law of Succession Act CAP 160 of the Laws of Kenya provides the threshold for revocation or annulment of grant. It states as follows:

76 Revocation or annulment of grant

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 by the 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 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

iv. that the grant has become useless and inoperative through subsequent circumstances.

[6] The petitioner, Elizabeth Mukombiro, the person to whom the grant of representation was made herein died on 20th May 2013. See Certificate of Death NO. 091936 given on 1st October 2013 under the seal of the Director of Civil Registration. As the administration of the estate is not complete, by her death, the grant issued to her has become inoperative. Such are subsequent circumstances envisaged under section 76(e) of the Law of Succession Act which permit the court to revoke a grant on the ground:-

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

[7] Therefore, this grant is a perfect candidate for revocation and I revoke it. This estate should not however remain without an administrator. It seems two parties are laying entitlement to **L.R NO ITHIMA.ANTUAMBUI/20-** the Applicant and Amos Karani M'Achuki. Again, each one of them expressed desire to be appointed sole administrator of this estate but on disparate reasons. It appears these parties may not agree on the person to be appointed administrator of the estate. Therefore, I will exercise my final discretion under section 66 of the Law of Succession Act which provides as follows:-

66. Preference to be given to certain persons to administer where deceased died intestate

When a deceased has died intestate, the court shall, save as otherwise expressly provided, have a final discretion as to the person or persons to whom a grant of letters of administration shall, in the best interests of all concerned, be made, but shall, without prejudice to that discretion, accept as a general guide the following order of preference

(a) surviving spouse or spouses, with or without association of other beneficiaries;

(b) other beneficiaries entitled on intestacy, with priority according to their respective beneficial interests as provided by Part V;

(c) the Public Trustee; and

(d) creditors;

Provided that, where there is partial intestacy, letters of administration in respect of the intestate estate shall be granted to any executor or executors who prove the will.

[8] Appointment of administrator in this case should be guided by the order of preference set out in law. I am aware that Amos is a grandson of the deceased. He is the son of Lucy Kainda, the daughter of the deceased. We have not been told of the whereabouts of Lucy Kainda. But, Amos seems to stake a claim that the estate property was bequeathed to their mother to distribute it to them. He also claims that they live on the estate property. This claim was however seriously denied by the Petitioner who stated that he is the one who occupies and cultivate the estate land. Claims of gifts inter vivos to some beneficiaries were also made. These are important considerations in law when determining the ultimate entitlement of a person in an estate. Therefore, taking into account all these considerations and in the best interest of the persons concerned, I exercise of the final discretion under section 66 of the Law of Succession Act, and, I hereby appoint Lawrence Mukaria M'Achiuki and Amos Karani M'Achiuki to be the joint administrators of this estate. A grant shall be issued to both as joint administrators. The petitioner shall apply for confirmation of the grant and serve the application within 21 days of today. Upon service, Amos or any other person interested shall file and serve mode of distribution within 21 days thereof.

[9] Hitherto you will have noted that I have not discussed the merits or otherwise of the arguments presented by either party for those issues shall be determined in the confirmation of grant hearing. It is so ordered.

Dated, signed and delivered in open court at Meru this 12th day of July 2018

F. GIKONYO

JUDGE

In the presence of:

Mr. Lawrence Mukana – present

M/s. Margaret Ncororo – present

Mr. Charles Ntongai – present

M/s. Wambugu advocate holding brief for B.G. Kariuki for petitioner

F. GIKONYO

JUDGE