



REPUBLIC OF KENYA

IN THE HUGH COURT OF KENYA

AT MERU

SUCCESSION CAUSE NO. 270 OF 2011

In the Matter of the Estate of Peter Meme Mwenda, Deceased

JOHN MUREA MWENDA.....1ST PETITIONER

SILAS MWITHALI MEME.....2ND PETITIONER

-VERSUS-

IBRAHIM MWONGERA MEME.....1ST OBJECTOR

MARTHA KAGENDO MEME.....2ND OBJECTOR

RULING

[1] Following a ruling and directions given by this court on 4th October 2017, the Objectors have filled Summons for Revocation/Annulment of Grant dated 25th January 2018, seeking for Revocation/Annulment of Grant issued on 17th July 2012 to the Petitioners. The grounds cited are *inter alia*:-

1. *That the Grant was issued to persons not entitled to the estate of the deceased; they are strangers;*
2. *That the 2nd Petitioner was a fraudster who had been investigated by the D.C.I.O Igembe and his claimed biological relationship with the deceased established to be false; and*
3. *That the Petitioners had fraudulently distributed the estate of the deceased to strangers.*

[2] The application was further supported by an affidavit sworn by the Objectors where they deposed that the 1st Petitioner was their father's brother whom they had entrusted to file the petition knowing that he would always act in their best interest and that of the deceased. But, the 2nd Petitioner was an imposter in their family; he conspired with two of his uncles to hold out as their brother with the sole intention of defrauding the estate. They denied ever having appeared before any court. Therefore, if anyone purporting to be any of them appeared, must have been an imposter sponsored by the Petitioners with the sole aim of perpetuating fraud.

[3] When the matter came up for hearing on 20th March 2018, the court directed that the instant application be canvassed by way of written submissions. Briefly, it was submitted for the Objectors that as the court observed in its ruling dated 4th October 2017, the issues at play were extremely contested and the paternity of the 2nd Petitioner had been challenged and that pursuant to this court's order the D.C.I.O had filed a report on paternity of the 2nd Petitioner which showed that according to government records, he was a son of Alesio M' Mauta and that 2nd Objector despite being acknowledged as the daughter of the deceased had not been provided for in the distribution and that strangers had acquired parts of the estate of the deceased.

[4] On the other hand it was submitted for the 1st Petitioner that the deceased was his brother and that he had the consent of all the family members and beneficiaries of the deceased estate as admitted by the Objectors to file this Petition. He also stated that the 2nd Petitioner was the 1st born of the deceased and a beneficiary of the estate. Further, the Petitioners argued that they had diligently distributed the estate as per the Certificate of Confirmation of Grant issued on 19th September 2012 and that they had acted in good faith contrary to assertions by the Objectors.

[5] The 2nd Petitioner also submitted he was the first born biological son of the deceased and that the Petitioner was a brother to the deceased

and a beneficiary of the estate of the deceased. he stated that the family had agreed that the 1st Petitioner (representing the interests of brothers) and the 2nd Petitioner (representing the interests of the siblings) be administrator of the estate of the deceased. he asserted that the beneficiaries met on 24th June 2012 and agreed on distribution and that none of the Objectors had challenged the authenticity of the said affidavit and that the Grant herein was confirmed on 17th September 2012 and all beneficiaries signed a consent affidavit for distribution of the estate of the deceased dated 24th June 2012 and that all beneficiaries save for Job and Salesio were present on 17th September 2012 when the Grant was confirmed.

DETERMINATION

[6] I have carefully considered this application and the rival submissions by the parties. 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

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

[7] The major quarrel here is that the Grant was issued to persons not entitled to the estate of the deceased; they were strangers and that the Petitioners had fraudulently distributed the estate of the deceased to strangers. The Objectors denied having ever been in court during the confirmation of the Grant herein. No doubt that the 1st Petitioner was a brother to the deceased. It is also not in dispute that the Objectors were children of the deceased. The only major source of bitter objection is the claim by the 2nd Petitioner Silas Mwithali Meme, that he was the 1st biological son of the deceased. As was observed by the court vide its ruling dated 4th October 2017, the Objectors' allegations that the 2nd petitioner was a stranger to the estate prompted the court to refer the matter to the Criminal Investigations Department for investigations and a report filed by the D.C.I.O Maua, show the 2nd Petitioner's father to be Aloise M' Mauta and his mother was Kathini Kaanjo. The 2nd Petitioner has not expressly denied the contents of the D.C.I.O report or provided any evidence to rebut the report save alleging that there was no application for DNA.

[8] Even though the 2nd Petitioner stated in his submissions that all the beneficiaries of the deceased estate had signed a consent affidavit for distribution of the estate of the deceased dated 24th June 2012, the Objectors denied having ever signed such consent. The record shows that, on 19th September 2012 all the beneficiaries appeared before Makau J save for Job and Salesio and that none was objecting to Confirmation of Grant. The record does however not indicate the names of those beneficiaries who were present. Serious allegations of fraud have been made against the petitioners. In absence of succinct evidence to the contrary, I am convinced to conclude that the Objectors were absent when the Grant was confirmed.

[9] The bitter acrimony which has characterized these proceedings will only be resolved by hearing all the parties as required under the law. In any case, identities of the beneficiaries is in controversy and will require plenary evaluation by the court in a trial. It is also notable that the petitioners have not diligently administered the estate. These matters rout the grant; the effect being that the grant becomes untenable and a candidate for revocation. Accordingly, I revoke the grant issued to the petitioners herein as well as the Certificate of Confirmation of Grant issued to the Petitioners on 17th September 2012. If any property had been transferred or altered in any manner, I direct it to revert back to the deceased for purposes of these proceedings. This being a succession matter, there will be no order as to costs.

Dated, signed and delivered in open court at Meru this 11th day of July, 2018

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F. GIKONYO

JUDGE

In the presence of:

Mr. Kithinji advocate for Objectors

Mr. Mwenda advocate for 2nd Petitioner

Mr. Mwenda advocate for 1st Petitioner

1st Petitioner – present

Both Objectors present

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F. GIKONYO

JUDGE