



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

SUCCESSION CAUSE NO. 201 OF 2014

In The Matter of the Estate of M'KringaM'Itabara (Deceased)

JANET NCORORO.....PETITIONER

Versus

JOEL THURANIRA M'ERINGAAPPLICANT

RULING

Omission of estate property

[1] In a ruling delivered on 25th April 2017 this court noted the following:-

[5] The Applicant did not annex any document to show that the other two pieces of land namely L.R NO NJIA/BURIERURI/832 & 1546 belonged to the deceased. Again, other than stating that there are other beneficiaries who were left out, he has not given a single name to that effect. Also, merely stating that he is a brother of the petitioner without providing some evidence that may tend to support his claim is not profitable. [That notwithstanding,] I note with a lot of concern that the Applicant was not listed as one of the issues of the deceased in the letter by the Chief dated 1.10.2013. Those lapses notwithstanding, however, I am impelled to give this matter one more chance in order for the truth to be borne out. And, to achieve this, I will exercise the powers of the court under section 47 and Rule 73 of the Law of Succession Act and Probate and Administration Rules, respectively. Accordingly, I direct that:

(1)The Chief who authored the letter dated 1.10.2013 shall appear before me during the next appointed date.

(2) The Applicant shall provide the court within 21 days with land registry record of L.R NO NJIA/BURIERURI/832 and L.R NO NJIA/BURIERURI/1546 which show that these lands belong to the deceased.

(3) On receipt of the information sought above, I will determine the request for revocation of the grant herein. It is so ordered.

[2] The Applicant did not provide evidence that he is the son of the deceased and or the brother to the Petitioner. He however filed copy of his identity card which bears the surname M'ERINGA which is also the surname of the petitioner and the other disclosed kin of the deceased. That notwithstanding, under section 76 of the Law of Succession Act, any interested party may apply for revocation of grant. Similarly, the court of its own motion may revoke the grant if it is satisfied that any or more of the grounds set out in section 76 thereof is proved. I will therefore not place much premium on lack of evidence that the applicant is a brother to the petitioner; instead I will emphasize and determine the application on merits.

The test for revocation

[3] See section 76 of the Law of Succession Act provides the grounds for revocation of grant as below:-

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 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 any material particular; or

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

Concealment or omission of something material

[4] The Applicant has provided the court with two certificates of official search which show that the registered proprietor in **NJIA/BURI-E-RURI/1546** and **NJIA/CIA-MWETIDWA/832** is M'Ikiringa M'Ithabara Thimuti and Eringa Thimuti, respectively. Although we have not been told, I suspect the deceased could also be known as Eringa Thimuti. On prima facie basis, these documents show that the deceased owned other properties apart from the one disclosed in the petition. As a strict requirement of law, the person applying for grant of representation should indicate in the petition a full inventory of all the assets of the deceased at the date of death including such assets if any as have arisen or become known to the petitioner since that date. The omission of the two properties herein is violation of the law; and no apparent reason was provided thereto. Therefore, it was not inadvertent. As such, I classify this as material non-disclosure and or concealment of something material to the case; such is a potent ground for revocation of grant by the court even on its own motion. Based on this information, I am satisfied:-

...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;

[5] It was also alleged that the Petitioner has not diligently administered the estate or filed inventory of administration of the estate. I am aware section 76(d) of the Law of Succession Act talks of...*has failed, after due notice and without reasonable cause* to do certain statutory things listed thereto. See the section below:

(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 any material particular;

I should state here that a person to whom grant is made bears legal obligations to act diligently and in accordance with the law. Timelines for administration of the estate are set out in section 83 of the Law of Succession Act. And the holder of a grant in the estate should act accordingly to any queries on due administration of the estate. Therefore, it suffices to state that the Petitioner was served with the Summons for Revocation of Grant which alleged indolence on her part in the administration of this estate. She did not file any response to those claims. This ground would cause revocation also.

[6] Applying the test of the law, the grant herein is a perfect candidate for revocation. I accordingly, revoke the grant issued to the petitioner. Parties to agree on the person or persons to be appointed administrator of the estate within 14 days. By this decision, application dated 8th July 2016 is completely determined. No orders as to costs given that this is a succession cause. It is so ordered.

Dated, signed and delivered in open court at Meru this 3rd day of July 2018

F. GIKONYO

JUDGE

In the presence of:

Thangicia for Wamache for Applicant

Applicant present

Petitioner absent

F. GIKONYO

JUDGE