



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

FAMILY DIVISION

SUCCESSION CAUSE NO. 3070 OF 2002

IN THE MATTER OF THE ESTATE OF SAPENCIA OMWAKWE ALIAS SAPENCIA IBASHA OMWAKWE (DECEASED)

EVERLYNE KATAMBANI MULAMA.....OBJECTOR/APPLICANT

VERSUS

SUSAN JOYCE OMWAKWE.....ADMINISTRATOR/RESPONDENT

WINNIE ADA OMWAKWE.....ADMINISTRATOR/RESPONDENT

STEPHEN ASSANGA OMWAKWE.....ADMINISTRATOR/RESPONDENT

RULING

1. The deceased Sapencia Omwakwe Alias Sapencia Ibasha Omwakwe died intestate on 10th February 1995. A grant of letters of administration was issued to the deceased's daughters Susan Joyce Omwakwe (1st respondent) and Winnie Ada Omwakwe (2nd respondent) on 23rd July 2003 and confirmed on 27th November 2012. The petition for grant listed the following as beneficiaries of the estate of the deceased:

- a) 1st respondent;
- b) 2nd respondent ; and
- c) Stephen Assanga Omwakwe (3rd respondent) (son).

The deceased's only property was Nairobi/Block 60/385. According to the certificate of confirmation of grant, the property was to be sold and the proceeds shared equally amongst the beneficiaries less the outgoing and agents costs.

2. On 7th April 2014 the 2nd respondent filed an ex-parte application under certificate of urgency seeking the court's order compelling the 1st respondent to vacate Nairobi/Block 60/385 within 30 days to enable vacant possession to be given to the purchasers upon completion and payment of the balance of the purchase price. On 28th August 2014 this court ordered the 1st respondent to hand over the original lease, Discharge of Charge and all other documents relating to Nairobi/Block 60/385 within 30 days to enable vacant possession of the premise to be given to the purchasers upon completion and payment of the balance of the purchase price.

3. On 3rd March 2015 Everlyne Katambani Mulama (the objector/ applicant) filed an application seeking the revocation of the grant of letters of administration issued to the 1st and 2nd respondents on 23rd July 2003. The application was based on the grounds that the respondents had obtained the grant secretly and fraudulently by concealment of facts, specifically by concealing the fact that the objector was a daughter of the deceased. The 1st respondent in her response to the application admitted that the objector was indeed a daughter of the deceased, but stated that at the time of petitioning for the grant, they did not know of her whereabouts hence the exclusion from the succession process. In her response, the 2nd respondent through her replying affidavit dated 22nd July 2015 also admitted that the objector was a daughter of the deceased, stated that she was but from her first marriage and hence not a beneficiary of the estate of their late father Reuben Mbalanya Omwakwe (deceased). The application is pending determination.

4. On 9th July 2015 the objector brought the present application under certificate of urgency seeking orders that:

- a) there be a stay of proceedings and orders of this court dated 28th August 2014 and pending hearing and determination of this application;
- b) the orders of 28th August 2014 be reviewed, varied and or set aside; and
- c) the objector's application for revocation of petition for letters of administration and confirmation of grant dated 3rd March 2015 be set down for hearing.

5. The application was based on the grounds that the objector was the first born child of the deceased yet other beneficiaries had refused to consider her as a beneficiary of the estate; that letters of administration in the estate of the deceased were obtained fraudulently and without consulting her; that her consent was never sought nor obtained hence she was not aware of the same; that the deceased had only one property and the same was illegally sold and distributed without her consent; and that her right to inherit her mother's estate had been denied. The application was supported by the objector's affidavit dated 9th July 2017.

6. The application was opposed by the 3rd respondent through his affidavit dated 23rd July 2015. He stated that none of the respondents knew of the objector's whereabouts after she abandoned their deceased's parents' home in the year 1990. He also stated that the only property in the estate was Nairobi Block 60/385 which had already been sold pursuant to an order of the court issued on 18th March 2015. He further stated that the applicant had not adduced sufficient grounds in support of her application to have the orders issued by the court on 28th August 2014 set aside, varied and/or reviewed.

7. Parties filed their submissions which I have considered.

8. I note the 3rd respondent's averment that the only property of the estate had been admittedly sold pursuant to an order of the court issued on 18th March 2015 by the objector. If that is the case, the application for review or setting aside of the orders of 28th August 2014 has already been overtaken by events. This also means that the property has transitioned to third parties. If the application is granted the orders would prejudice the third parties without according them a hearing. In any event, the bone of contention is whether the applicant is a beneficiary of the deceased entitled to benefit from her estate. The only way to determine the same is through the hearing of the application for revocation of grant dated 3rd March 2015. If she succeeds in the application she can at least share in the proceeds of the sale of the only property of the estate of the deceased.

9. In conclusion, I schedule the hearing of the application for revocation of grant for 27th November 2018. I make no order as to costs.

DATED and DELIVERED at NAIROBI this 2ND October 2018

A.O. MUCHELULE

JUDGE