



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

SUCCESSION CAUSE NO. 348 OF 2008

(IN THE MATTER OF THE ESTATE OF KARIUKI MAUCHU (DECEASED))

JANE NYAGUTHIE KARIUKI.....PETITIONER/RESPONDENT

VERSUS

SILVESTER NGUNJIRI KARIUKI.....APPLICANT

JUDGMENT

On 8th of July 2008, the respondent petitioned for grant of letters of administration intestate of the estate of Kariuki Mauchu (herein 'the deceased') who died on 2nd February, 2008 aged 85. And the time of his demise, the deceased was domiciled in Kenya and his last known place of residence was Ruringu in Nyeri County.

According to the affidavit in support of the petition, the respondent named seven persons, including herself, as having survived the deceased. Two of the survivors were described as the deceased's sons while the rest, including the respondent, were said to be his daughters.

The only asset comprising the deceased's estate was indicated to be a parcel of land described as Title No. Aguthi/Gatitu/2968 measuring approximately 0.41 hectares.

The grant of letters of administration intestate was made to the respondent on 2nd June, 2009 and was subsequently confirmed on 26th February, 2010 with the entire estate devolving upon the respondent absolutely.

By a summons for revocation and/or annulment of grant dated 18th September, 2013, and made under section 76 of the Law of Succession Act, cap. 160, the applicant sought to have the grant revoked or annulled on grounds that, the applicant was misrepresented as having consented to the grant being made to the respondent; that, the respondent did not disclose that she ranked lower in the degree of consanguinity than the respondent or other survivors of the deceased as to be entitled to the grant; and, that the grant was made and subsequently confirmed without a letter from the chief, apparently of the location from which the deceased hailed. Put in the context of section 76 of the Act, I understand these grounds to be as follows:

- a. 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;

- b. 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; and,

- C. That the proceedings to obtain the grant were defective in substance.

On 7th February, 2014, directions on the hearing of the summons were taken before my brother Wakiaga, J, who, apparently with the consent of the parties' counsel, directed that the summons be disposed of by way of written submissions based on the affidavit evidence.

One fact that stands out prominently in the affidavit in support of the summons for revocation of grant and on which this summons must turn is that the petitioner is a granddaughter to the deceased and not his daughter as alleged in the affidavit which she swore in support of the petition for grant of letters of administration. I have carefully read the affidavit sworn by the respondent in response to the applicant's summons for revocation of grant; nowhere in that affidavit has she rebutted the applicant's evidence that she is the deceased's granddaughter rather than her daughter. Without such rebuttal and in the absence of any evidence to the contrary, the court is entitled to assume that the applicant is right that the description which the respondent assumed in her petition for grant of letters of administration is misleading. That being the case, it can be assumed too, that the respondent deliberately chose to mislead the court so as to obtain the grant of the letters of administration of the deceased's estate.

In these circumstances, I would agree with the applicant that the grant is vitiated in at least two respects; first, that it was obtained fraudulently by the making of a false statement or by the concealment from the court of something material to the case: and, second, 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.

According to section 76 of the Law of Succession Act, proof of any of these two grounds is sufficient for the court to annul or revoke a grant; accordingly, I am left with no alternative but to revoke the grant that was made to the respondent on 2nd June, 2009 and confirmed on 26th February, 2010.

Having revoked it, the question whether the applicant consented to the confirmation of the grant or was present during the confirmation proceedings is now *fait accompli*. Suffice it to say, the purported transfer of the deceased's estate to the respondent on the basis of the revoked grant is now unsustainable; accordingly, it is hereby cancelled and I hereby order that the ownership to Title Number Aguthi/Gatitu/2968 reverts to the deceased's name. Parties will bear their respective costs. It is so ordered.

Signed, dated and delivered in open court this 12th day of October, 2018

Ngaah Jairus

JUDGE