



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERUGOYA

HIGH COURT SUCCESSION CAUSE NO. 668 OF 2015

IN THE MATTER OF THE ESTATE OF MWAURA MBIRA Alias NDUMU MBIRA
DECEASED

ALICE WANJA MWAURA APPLICANT

V E R S U S

SHELMITH WACUKA NDUMU RESPONDENT

RULING

1. The applicant Alice Wanja Mwaura filed a summons General under Section 76 of the Law of Succession Act seeking orders that the Limited Grant of Letters of Administration Ad Litem issued to Shelmith Wachuka Ndumu be annulled and/or revoked for being obtained fraudulently and through concealment of material facts to court.

The application is based on the following grounds:-

- a) That the applicant is one of the widows of the late MWAURA MBIRA alias NDUMU MBIRA (DCD) whose estate this cause relates.*
- b) That there is before this court Succession Cause No. 310 of 2013 at Kerugoya where the Applicant is named the Administrator of the estate of the deceased.*
- c) That the Respondent is aware of the existence of Kerugoya Succession Cause No. 310 of 2013 where she has appeared severally as RAHAB MWERU MWAURA her mother is a party therein.*
- d) That this grant was obtained secretly and fraudulently without disclosure of the existence of the substantive cause being Succession Cause No. 310 of 2013 at Kerugoya High Court.*
- e) That the grant herein ought to be revoked so as to avoid confusion in the management and representation of the estate of the deceased.*

2. The application is supported by the affidavit of the applicant Alice Wanja sworn on 6/4/16. Her contention is that there is a succession cause No. 310/2013 with regard to the estate of the deceased which the respondent is aware of as she has been bringing her mother to court. She further contends that she has recently learnt that the respondent has secretly and fraudulently through concealment of material facts taken out a Limited Grant of Letters of Administration Ad Litem to the estate of the deceased.

3. In opposing the application, the respondent Shelmith Wachuka Ndumu filed a Replying Affidavit sworn on 2/6/16 and she contends that it is true that there is a succession cause No. 144/2012 but that the applicant secretly obtained the grant without informing all the family members and beneficiaries. That her mother Rahab Mweru Mwaura filed Succession Cause No. 310/2013 which has since been consolidated with Succession Cause No. 144/2012. That she applied for Letters of Administration Ad Litem to sue the owners of Land parcel No. Baragwe/Guama/409 which was not included in the estate and was fraudulently transferred to the applicant and others and would like to sue her for fraud.

4. The parties proceeded by way of written submissions. The applicant submits that Letters of Administration have been issued to the applicant in the substantive cause No. 144/2012 and the respondent cannot therefore seek for a grant of Letters of Administration Ad Litem over the same estate and of which she is not a beneficiary.

5. For the respondent it is submitted that the applicant is a party to the fraudulent transfer of land parcel No. Baragwe/Guama/409 and cannot sue herself. That is why she applied for Letters of Administration Ad Litem. Reliance was had on **Section 54 of the Law of Succession Act**

Cap 160 Laws of Kenya and in particular **Para 14 of the 5th Schedule** which provides:

“when it is necessary that the representative of a deceased person be made a party to a pending suit, and the executor or person entitled to administration, is unable or unwilling to act, letters of administration may be granted to the nominee of a party in the suit, limited for the purpose of representing the deceased therein, or in any other cause or suit which may be commenced in the same or in any other court between the parties, or any other parties, touching the matters at issue in the cause or suit, and until a final decrees shall be made therein, and carried into complete execution.”

I have considered the application. Section 76 of the Law of Succession Act provides:

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.”

6. The section gives circumstances that can lead to the revocation of grant. There must be evidence that the proceedings to obtain the grant were defective in substance or the grant was obtained fraudulently by making of a false statement; or by concealment of material facts or by means of untrue allegations.

The question is whether where an administrator has been appointed, another party can obtain a grant of Letters of Administration Ad Litem. Whether the Limited Grant should be revoked. The respondent obtained a Limited Grant after a Grant of Letters of Administration had been obtained by the applicant. **Section 53 of the Law of Succession Act** provides:-

53. Forms of grant

“A court may-

(a) where a deceased person is proved (whether by production of a will or an authenticated copy thereof or by oral evidence of its contents) to have left a valid will, grant, in respect of all property to which the will applies, either-

(i) probate of the will to one or more of the executors named therein; or

(ii) if there is no proving executor, letters of administration with the will annexed; and

(b) if and so far as there may be intestacy, letters of administration in respect of the intestate estate.”

These are the forms of grant. With regard to Limited Grant, **Section 54** provides:

54. Limited grants

“A court may, according to the circumstances of each case, limit a grant of representation which it has jurisdiction to make, in any of the forms described in the Fifth Schedule”.

7. The fifth schedule provides for grant for special purposes. Para 14 provides that letters of Administration limited for purposes of

representing the deceased in a suit where the administrator is unwilling to act may be granted.

8. The provision of the paragraph gives court discretion to issue a grant for the purpose of representing the deceased where the administrator is unwilling to act.

9. The respondent applied for a Limited Grant for purpose of filing a suit in respect of land Parcel No. Baragwe/Guama/409 (now subdivided into Baragwe/Guama/3391 – 3401) which is shown by the annexed green card. It shows that the land changed hands and is now not registered in the name of the deceased but in the names of other people. The applicant is the administrator of the estate of the deceased. The Law of Succession Act does not envisage a situation where there are two parallel administrators for the same estate, one holding a grant of Letters of Administration and another holding a Limited Grant. This would create chaos and confusion.

10. The Law of Succession Act provides for the powers and duties of the personal representative, **Section 82 & 83**. There are Letters of Administration issued in a substantive cause, that is, **No. 144 of 2012**. The estate has administrators who are supposed to take care of the interests of the estate. I am of the view that where there is a substantive succession cause which has followed all the processes and a Grant of Letters of Administration has been issued, a limited or special grant cannot be issued to another person over the same estate. The **Act** has provisions on how the administrators can be held and/or made to account.

11. I am of the view that the proceedings to obtain the grant were defective in substance as it has been shown that the respondent was aware of the existence of the substantive succession cause No. 310/2013. She obtained the grant secretly and fraudulently and failed to disclose that there existed a substantive cause and a grant of Letters of Administration had already been issued. Though the respondent relied on the provisions of the 5th schedule to the Act, my view is that this does not supersede the express provisions of the **Act** under which the applicant was appointed as an administrator.

12. The properties which the respondent is pursuing are not in the name of the deceased. In **re Estate of S T M [2017] eKLR**

The Court held;

From the issues considered above, this Court is satisfied that the proceedings to obtain the grant were defective in substance; that the grant issued on 25th August 1994 and confirmed on 30th March 1995 was obtained fraudulently by concealing material facts and by untrue allegation.....

Therefore since the grant was obtained in contravention of Section 76 of Law of Succession Act Cap 160; it is hereby revoked and annulled forthwith.

13. What the respondent is claiming is a matter which can be properly addressed in the succession as the court has wide powers with regard to the estate of a deceased including the cancellation to title deeds if it is proved that they were obtained fraudulently. This has been held in **SantuzzaBilioti alias Mei Santuzza (Deceased) v Giancarlo Falasconi [2014] eKLR**.

The Respondents in this case alleged that a succession court cannot cancel a title deed. The court held:

This cannot be the case as the succession court has powers to order a title deed to revert to the names of a deceased person. This in effect amounts to cancellation of the title deed. Further, a succession court can order a cancellation of a title deed if a deceased's property is being fraudulently taken away by no-beneficiaries such as where the property is being sold before a grant is confirmed. The respondent is therefore not without an option since there is a succession cause where she can move the court for appropriate for revocation and cancellation of the resultant title deeds.

14. For these reasons I find that the grant issued to the respondent ought to be revoked, as the proceedings were defective and respondent obtained it through none disclosure of facts which were relevant. The provision of **Section 76 of the Law of Succession Act**. Are clear that such a grant ought to be revoked.

The application has merits. I order as follows:

1. The Limited Grant of Letters of Administration issued to Shelmith Wachuka Ndumu is annulled and/or revoked.
2. Costs to the applicant.

Dated at Kerugoya this 14th day of December 2018.

L. W. GITARI

JUDGE