



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT EMBU
SUCCESSION CAUSE NO. 398 OF 2011
IN THE MATTER OF THE ESTATE OF NDUNGU DHARANO ALIAS NGUNGU

THARANO (DECEASED)

MORRIS NJERU WACHIRA

JOHN KINYUA NJERU

ELIUD NJERU WACHIRA

AGNES MUTHONI WACHIRA

FAITH WANJIKU NGUNGU

PENINA GITIRI WACHIRA

NANCY WANJA WACHIRA

TERESIA WAWIRA NTHARANO

GLADYS MUTHONI

WAMBETI WACHIRA.....**APPLICANTS**

VERSUS

FREDRICK MUNYI NJERU.....**RESPONDENT**

R U L I N G

A. Introduction

1. This is a ruling on summons for annulment of grant dated 27th November 2011 filed by the ten (10) applicants. The grant was confirmed on 13th October 2014 thus authorizing the distribution of the deceased's estate.
2. The summons seeks the following orders: -
 - a) *That the confirmed grant of administration issued to FREDRICK MUNYI NJERU on the 13th October ,2014 be revoked/annulled.*
 - b) *That the costs of the application be provided for.*
3. The applicants have proposed how the estate of the deceased should be distributed as follows;
 - a) *Frederick Munyi Njeru – 0.40 ha*

- b) *John Kinyua Njeru - 0.40 ha*
- c) *Morris Njeru Wachira - 0.40 ha*
- d) *Eliud Njeru Wachira - 0.40 ha*
- e) *Morris Njeru Wachira - 0.40 ha To Hold In Trust of all the Beneficiaries*
- f) *Paulo Gicovi Munyi - 0.40 ha Jointly*
- g) *David Waweru Munyi*
- h) *Faith Wanjiru Ngungu - 0.20 ha*
- i) *Penina Gitiri Wachira - 0.20 ha*
- j) *Nancy Wanja Wachira - 0.20 ha*
- k) *Teresia Wawira Ntharano - 0.20 ha*
- l) *Gladys Muthoni - 0.20 ha*
- m) *Wambeti Wachira - 0.20 ha*
- n) *Agnes Muthoni Wachira - 0.20 ha*

4. The applicants did not file any submissions in support of their summons whereas the respondent gave a response to the application and further filed submissions as directed by court.

B. Applicant's Case

5. In their affidavit in support of the summons for annulment of grant, the applicants stated that part of the reasons for filing the summons was that the respondent had allocated himself a bigger portion of 1.6 ha. while the rest of the beneficiaries received smaller portions.

6. The applicants further deponed that the respondent did not involve them during the sub-division of the deceased's estate and that failure to revoke the grant would result in disinheritance of the applicants and their children.

C. Respondent's Case

7. In his replying affidavit dated 2nd January 2018, the respondent deponed that the applicant's application was frivolous, vexatious, misleading and abuse of the court process.

8. It was the respondents case that during the application for confirmation of grant, some of the applicants, including the 1st applicant, attended court and those who did not, mainly the respondent's sisters, were given notice as directed by court but failed to attend court.

9. He further deponed that he had since began distribution of the estate as per the confirmed grant and that since no party had appealed against confirmation, this application has no merit.

10. The respondent filed a supplementary affidavit dated 2nd January 2018 in which he deposed that none of the applicants raised an objection/protest against the confirmation of grant and that the current summons are an afterthought especially as they have been instituted more than 3 years since the grant was confirmed.

11. He further deposed that all the applicants had been provided for and that all the applicants had agreed on the distribution of the deceased's estate prior to confirmation of grant in a family meeting.

12. The applicant further stated that if the court were to allow the summons for revocation, the beneficiaries would suffer irreparable damage as most of the beneficiaries have invested heavily in their respective shares.

D. Respondent's Submissions

13. The respondent submitted that the applicant had failed to demonstrate that the proceedings to obtain the grant were defective in substance. It is a matter of fact that some of the applicants were present in court on the date of confirmation of grant and even those who were not present, had been given sufficient notice.

14. The respondent further submitted that the applicants had failed to demonstrate that the grant was obtained fraudulently by making false

statements or by concealment of something material to the case.

15. In this regard it was the respondent's submission that despite allegations by the applicants of him awarding himself bigger portions of the deceased estate to the detriment of the applicants had not been substantiated.

16. It was the respondent's submission that no evidence had been produced to demonstrate that the grant was obtained by means of untrue allegation of fact and finally that the applicants had failed to demonstrate that the respondent in his administration of the deceased's estate, had failed to act diligently.

The Determination

17. I have carefully considered the affidavits, of both parties and the relevant law and case law. I have identified the issue for determination as singular whether the applicants have demonstrated sufficient grounds for court to revoke the grant as provided for under Section 76 of the Law of Succession Act.

18. The section provides;

“A grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by an 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 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 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. “

19. The above provision was construed by the Court of Appeal in the case of **Matheka and Another vs Matheka {2005} 2KLR 455** where the Court of Appeal laid down the following guiding principles: -

i. A grant may be revoked either by application by an interested party or by the court on its own motion.

ii. Even when revocation is by the court upon its own motion, there must be evidence that the proceedings to obtain the grant were defective in substance, or that the grant was obtained fraudulently by the making of a false statement or by concealment of something material to the case or that the grant was obtained by means of untrue allegation of facts essential in point of law or that the person named in the grant has failed to apply for confirmation or to proceed diligently with the administration of the estate.

20. The grounds upon which a grant may be revoked or annulled are thus statutory and it is incumbent upon any party making an application for revocation or annulment of a grant to demonstrate the existence of any or some of the above grounds.

21. A close look at **Section 76** shows that the grounds can be divided into the following categories: -

- ***the propriety of the grant making process;***
- ***mal-administration; or***
- ***where the grant has become inoperative due to subsequent circumstances.***

22. It is trite law that if a grant was obtained fraudulently by making of a false statement or by the concealment from the court of something material to the case; or that the grant was obtained by means of untrue allegation of fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently, such a grant can be revoked or annulled. The law permits the court to revoke a grant on its own motion or on application by an interested person.

23. A perusal of the court record reveals that the respondent at all times involved the applicants in the proceedings as he sought confirmation of grant. Further it is on court record that during the confirmation proceedings, all applicants were given due notice as this court had directed the administrator. No objection or protest was raised by any of the applicants present during the proceedings for confirmation of grant. The 1st, 2nd and 9th applicants were present in court. The court noted that the 4th, 5th, 6th, 7th and 8th applicants had been served but failed to attend. All the applicants had given the respondent written authority to act on their behalf dated 27/11/17.

24. The current proceedings have been brought 3 years after the confirmation of grant without any explanation. I reach a conclusion that the proceedings leading to the issuance of the grant were not defective in substance as alleged and that all material facts relevant to the case were disclosed to the court. I am persuaded that the Respondent did not conceal any crucial information to the court, which would have influenced the court in issuing the grant to him to the disadvantage of other beneficiaries. The applicants were full involved in this case and even gave their consents to the respondent to act on their behalf.

25. The applicants have further failed to produce any evidence of mal-administration of the deceased's estate. Consequently, it is my considered view that the applicants' summons dated 27th November 2011 is an afterthought and has no legal or factual basis.

26. It is my finding that the applicants have failed to establish any of the grounds prescribed by **Section 76 of the Act**. Consequently, this application lacks merit and it is hereby dismissed.

27. Each party to meet their own costs.

DELIVERED, DATED AND SIGNED AT EMBU THIS 4TH DAY OF DECEMBER, 2018.

F. MUCHEMI

JUDGE

In the presence of: -

Mr. Muriithi for Mr. Momanyi for the Applicant