



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**SUCCESSION CAUSE NO. 1715 OF 1992**

**IN THE MATTER OF THE ESTATE NJOROGE CHEGE (DECEASED)**

**RULING**

1. The application dated 27<sup>th</sup> April 2015 is a summons for revocation of grant founded on section 76 of the Law of Succession Act, Cap 160, Laws of Kenya. From the body of the application and the contents of the affidavit in support of the application, it is clear that the applicant is not seeking revocation of the grant of representation made herein, but of the certificate of confirmation of the grant.

2. Section 76 of the Act provides as follows:

*'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 to in point 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 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 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 particulars; or*

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

3. I have cited that provisions above to demonstrate that there is nothing in there that brings certificates of confirmation of grant within the purview of that law. Section 76 is about the process of obtaining the grant of representation, about lack of diligence in administration and about grants becoming useless and inoperative. The provisions have nothing to do with confirmation of grants, save that failure to apply for the same attracts revocation of the grant.

4. A person aggrieved by the making of confirmation orders should move the court for review of the confirmation orders, as there is no provision for revocation of the certificate of confirmation of grant. Even if the certificate were to be revoked it would still leave the confirmation orders intact, for the certificate is nothing more than the formal order or instrument extracted from the order made by the court confirming the grant. The proper thing really should be about altering or setting aside the orders of the court confirming the grant. The certificate of confirmation should not be dealt with in isolation. Review of orders of a probate court is provided for under Rule 63 of the Probate and Administration Rules, which adopts several provisions from the Civil Procedure Rules.

5. The application as framed is therefore not available for consideration for I cannot possibly revoke the certificate in question under section 76.

6. I note that the application is also founded on Rule 73 of the Rules, which saves the inherent powers of the court with a view to doing justice and to prevent abuse of court process. Ideally, the inherent powers are cited where there are no provisions to govern a particular situation. In this case, the order impugned can be reviewed and there is provision for the bringing of applications for review. I cannot therefore purport to move under the inherent powers of the court when the applicant ought to have moved the court for the review of the order the court made to confirm the grant.

7. Can I review the order even though the applicant has not moved the court for review? I do not think I should. Revocation of grants is guided by the principles set out in section 76 of the Law of Succession Act. Review of court orders is however governed by different principles which are set out in the Civil Procedure Rules. It would be unjust to determine an application founded on section 76 as if it was based on the review provisions. The respondents to the application would be disadvantaged for they would not have had an opportunity to respond effectively to the application that the court ultimately determines.

8. I do not find any merit in the application dated 27<sup>th</sup> April 2015. I shall dismiss it with costs to the respondents.

9. The estate comprises of assets situated at Gatamaiyu of Kiambu County. Consequently, the matter herein shall be transferred to the High Court of Kenya at Kiambu for final disposal.

**DATED, SIGNED and DELIVERED at NAIROBI this 20<sup>TH</sup> DAY OF JANUARY, 2017.**

**W. MUSYOKA**

**JUDGE**