



**REPUBLIC OF KENYA**

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

**SUCCESSION NO. 374 OF 2010**

**IN THE MATTER OF THE ESTATE OF PETER JOMO MUMO (DECEASED)**

**SYLVIA WANJIRU NGUGI .....APPLICANT**

**VERSUS**

**EPHANTUS KARIUKI JOMO .....RESPONDENT**

**RULING**

1. The deceased to whose Estate the proceedings herein relate is Peter Njomo Mumo, who died intestate on 14.3.93 at Bakarani Medical Hospital. The record shows that a Grant of Letters of Administration was issued to Ephantus Kariuki Jomo, a son of the deceased, the Respondent herein, on 28.3.11.
2. The Application before me dated 24.2.15 is a Summons for Revocation of the said Grant by Sylvia Wanjiru Ngugi, the Applicant herein, claiming that the Grant was obtained fraudulently by the making of a false statement and/or concealment of facts material to the case. The Applicant claims that the Respondent failed to disclose to the Court the existence of Succession Cause No. 241 of 1993 in respect of the same estate and in which both he and the Applicant were objectors. That the Respondent excluded the Applicant and her daughter Eunice Wanja being wife and daughter respectively of the deceased, as beneficiaries of the estate. The Applicant further claims that the Respondent had failed to proceed diligently with the administration of the estate and to produce accounts as required under Section 83 of the Law of Succession Act.
3. The Applicant alleges that she has been in possession of the house on Plot No. 2/49, Chani since 1993 and that the deceased had instructed his lawyers to transfer the same to her. That the Respondent had himself signed a letter of transfer of the property to her dated 9.10.13 and a discharge voucher confirming that the said house belonged to her. She claims that the Respondent has sold the house on Plot No. 2/27, Migadini belonging to the deceased and that he now he wants to sell her house on Plot No. 2/49.
4. It was submitted for the Applicant that Succession Cause No. 241 of 1993 was still pending. That the fact that the Applicant was a wife of the deceased was affirmed by Khaminwa, J. and Muriithi, J in their respective Rulings in Succession Cause No. 241 of 1993. It was further submitted that both the Applicant and her daughter were beneficiaries of the estate and that the Respondent lawfully transferred the house on Plot No. 2/49 to the Applicant.
5. For the Respondent, it was submitted that the Application lacks merit *ab initio*. That the grant of representation issued to Rosemary Mangu Peter in Succession Cause No. 241 of 1993 was revoked thereby concluding the matter. That for this reason, the Respondent had no reason to revisit the same when filing a fresh petition for grant in respect of the estate of his deceased father. It is further submitted that no evidence has been adduced as proof that the Applicant and her daughter are wife and daughter of

the deceased respectively. That the birth certificate of the child was obtained 10 months after the demise of the deceased.

6. On Plot Number 2/49, Chaani, it is submitted for the Respondent that no evidence was adduced to the effect that the Applicant has been in possession thereof. That the alleged instructions by the deceased of transfer of the said plot to the Applicant is a forgery as is the letter dated 9.10.13. It is further submitted that the Applicant's application for provision out of the estate was dismissed by Muriithi, J. in his Ruling of March 2013 and that the matter is therefore *res judicata*. It was argued further for the Respondent that the Applicant has not come to Court with clean hands as the Grant was issued way back on 28.3.11 and no objection was filed, while the instant Application was filed on 24.2.15. That the Applicant did not take action until the Respondent filed an application for confirmation of grant. The Respondent therefore prays for dismissal of the Application.

7. I have carefully considered the Application and submissions in support of and in opposition to the Summons for Revocation of Grant.

6. The issues for determination are:

i) Whether 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;

ii) Whether the delay in filing the Application is of any consequence.

7. The law relating to revocation of grants is found in Section 76(b) of the Law of Succession Act which provides

***“ 76 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) ...***

***(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) ...***

8. The Applicant's main claim is that the Respondent in his petition for grant of letters of administration concealed the fact that she and her daughter were beneficiaries of the estate of the deceased. She claimed that in Succession Cause Number 241 of 1993 relating to the estate of the deceased herein, in which she and the Respondent had each filed objection, Khaminwa and Muriithi, JJ had in their rulings affirmed her position as a beneficiary of the estate of the deceased. I have perused the said rulings and note that in the application in respect of which Khaminwa, J delivered a ruling, by the Applicant and Respondent had each sought revocation of the grant issued to Rosemary Mangu Peter (now deceased). The Respondent sought revocation of grant on grounds that 4 beneficiaries namely, himself, Isabella Mkiwa, Angelica Wanjaa and Francis Mwashumbe were excluded. The Applicant based her application on the ground that her name and that of her daughter were left out. In her Ruling, Khaminwa, J. rendered herself thus:

***“Upon considering the evidence of applicants and the provisions of succession Act Cap 160 it is clear that the Grant should never have been issued to the first administrator rosemary M. Peter. She was guilty of concealment of material facts.***

***I allow both applications and grant orders as prayed. Any 2 adult members of the family may apply for a grant to administer the assets still unadministered”***

***Ephantus Kariuki is hereby ordered to file accounts of what the assets have been distributed (sic) within 30 days of this order”***

9. Muriithi, J on the other hand considered the Applicant's application for provision under Section 26 of the Act. The learned Judge in his Ruling quoted the submissions of Counsel for the Administrator (the Respondent herein) thus:

***"... I rely on the facts in the Affidavit. I submit that the Applicant may be included as a beneficiary. There should be a consent by the parties before the grant is confirmed. The parties should move the court for confirmation of Grant and the parties would have to consent to the mode of distribution..."***

10. Muriithi, J. while dismissing the application stated:

***"...the proper forum for the determination of the applicant's prayer for provision would be during the distribution of the estate..."***

I am satisfied from the above rulings that the Applicant and her daughter are indeed beneficiaries of the estate of the deceased. The Respondent's claim to the contrary at this late stage cannot hold water as he did not appeal against either of the Rulings cited above.

11. This Court notes that the Respondent rather than applying for a grant to administer assets left unadministered as directed by the Court, applied for a fresh grant in a fresh cause and failed to involve and include the Applicant and her daughter. It is instructive that he also excluded Isabella Mkiwa one of the beneficiaries who he had claimed in his application for revocation in Succession Cause 241 of 1993, had been left out. The filing of a fresh cause smacks of fraudulence on the part of the Respondent.

12. Section 51(2)(g) of the Law of Succession Act provides that an application for a grant of representation should include *inter alia*:

***"in cases of total or partial intestacy, the names and addresses of all surviving spouses, children, parents, brothers, and sisters of the deceased, and of the children of any child of his or hers then deceased;"***

The Respondent failed in his petition for the Grant herein to include the names of the Applicant and her daughter as well as that of Isabella Mkiwa contrary to the requirements of Section 51(2)(g) of the Act. The Respondent's actions are therefore nothing but fraudulent.

13. Is the delay in filing the Application herein of any consequence? The Respondent argues that the Applicant has not come to Court with clean hands as the Grant was issued on 28.3.11 while the Application herein was filed on 24.2.15. Section 76 of the Act which 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 any interested party or of its own motion..."*** (emphasis added).

The above provision makes it clear that there is no limitation of time for making an application for revocation or annulment of grant. Such an application may be made at any time. The delay in filing the Application herein is therefore of no consequence and does not render the Application without merit.

14. On the issue of Plot No. 2/49 Chaani, the correct forum for determination of the same as ruled by Muriithi, J. is at the distribution of the estate.

15. In view of the foregoing, I find that the Respondent obtained the Grant herein fraudulently by making a false statement and concealment from the Court of something material to the case. In the circumstances, I allow the Application and make the following orders:

a) The Grant of Letters of Administration for the estate of Peter Jomo Mumo issued to Ephantus Kariuki Jomo on 28.3.11 be and is hereby revoked.

b) The Respondent do produce to the Court a full and accurate inventory of the assets and liabilities of the deceased and a full and accurate account of all dealings therewith from 28.3.11 up to the date of the account within 60 days of the date hereof.

c) Because the Respondent filed the instant cause despite the existence of Succession Cause 241 of 1993, he will bear the costs of this Application.

d) The matter will be mentioned on 21.3.17 for compliance.

**DATED, SIGNED and DELIVERED in MOMBASA this 12<sup>th</sup> day of January, 2017**

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**M. THANDE**

**JUDGE**

**In the presence of: -**

..... **for the Applicant**

..... **for the Respondent**

..... **Court Assistant**