

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 3120 'B' OF 2002

IN THE MATTER OF THE ESTATE OF LAWRENCE GITHINJI MAGONDU (DECEASED)

RULING

1. The application for determination is dated 26th June 2009. It seeks revocation of grant on the grounds that the process of obtaining rectification of a confirmed grant was defective and the further rectification was obtained in fraudulent proceedings.
2. Revocation of grants is provided for in section 76 of the Law of Succession Act, Cap 160, Laws of Kenya, upon which the instant application is premised. The said provision empowers the court to revoke a grant of representation on three general grounds. Firstly, is where the process of obtaining the grant of representation was attended by identifiable irregularities, such as defects in the process, misrepresentations, concealment of facts and other frauds. Secondly, where there are difficulties attending the process of administration of the estate, such as where, despite notice, the administrator fails to apply for confirmation of grant within the period allowed in law, or fails to proceed diligently with the exercise of administering the estate, or fails to render an account as and when required to do so by the court. The last instance, is where the grant becomes useless and inoperative on account of changed circumstances.
3. In the instant case, the applicant complains that the administrators had a certificate of confirmation of grant rectified through a process that they say was defective and fraudulent.
4. It needs emphasis that section 76 targets revocation of grants, and not of any other process. A certificate of confirmation of a grant is not a grant, and therefore the process of obtaining it or obtaining its rectification cannot fall within what section 76 of the Act envisages. A grant ought not to be revoked merely because the administrators possibly obtained rectification of a certificate of confirmation of grant in defective proceedings.
5. I do not find any merit in the application dated 26th June 2009, and I do hereby dismiss the same with costs to the respondents.

DATED, SIGNED and DELIVERED at NAIROBI this 3RD DAY OF FEBRUARY, 2017.

W. MUSYOKA

JUDGE