



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MERU
SUCCESSION CAUSE NO.338 OF 2006

In the Matter of the Estate of M' Marete Kanampiu (Deceased)

PATRICK MURITHI MUNENE.....PETITIONER

Versus

FRANCIS MWITI.....1ST INTERESTED PARTY/APPLICANT

JULIUS KIMATHI.....2ND INTERESTED PARTY/APPLICANT

GLADYS MWARI.....3RD INTERESTED PARTY/APPLICANT

JANET KARIUKI MARETE.....4TH INTERESTED PARTY/APPLICANT

JUSTUS MBAABU.....5TH INTERESTED PARTY/APPLICANT

RULING

Two applications for revocation

[1] Before me are two Applications for revocation of Grant. The first one is dated 16th February 2012 and was filed by the 1st to the 5th Applicants. The 2nd Application is dated 13th August 2012 and was filed by the 6th to the 10th Applicants. As both applications are seeking revocation of the grant herein, I will examine them to establish whether there is any lawful ground to revoke the grant. As such, a single ruling is comprehended and I shall so issue it.

Direction

[2] Initially, the applications were to be heard by way of *viva voce* evidence. But, as the Petitioner was ill and could not withstand rigorous trial, the parties later agreed to have the matter disposed of by way of written submissions. Accordingly, the earlier directions were altered and are superseded by the latter directions. I will, therefore, consider the affidavits and submissions filed and make my decision. But let me first set out the gist of each application.

Gist of first application

[3] The gist of the first application is *inter alia*;

(1)That the proceedings to obtain the Grant were defective in substance in that the applicants

did not consent to the making of the Grant; and

(2)That the Grant was obtained fraudulently in that the Petitioner did not inform the Applicants that he was petitioning for Grant of Letters of Administration.

Gravamen in second application

[4] The gravamen in the 2nd Application is inter alia:

(1)That the distribution was carried out by the Petitioner was unjust and unfair; and

(2)That the Grant was obtained fraudulently by making a false statement and concealment from the court of something material to the case.

Arguments

[5] In a nutshell, the 1st to 5th Applicants' case is that they are children of the deceased and therefore beneficiaries of the estate of the deceased. They listed down the children of the deceased whom he left surviving him as follows:

1. JANET KARIUKI	WINDOW	ADULT
2. PATRICK MUNENE	SON	ADULT
3. VICTOR KAARIA	SON	ADULT
4. FRANCIS JASON	SON	ADULT
5. JULIUS KIMATHI	SON	ADULT
6. JUSTUS MBAABU	SON	ADULT
7. JOYCE NGUGI	DAUGHTER	ADULT
8. HELLEN RIMA	DAUGHTER	ADULT
9. RHODA CHURE	DAUGHTER	ADULT
10. GLADYS MWARI	DAUGHTER	ADULT
11. KAGUNA MARETE	DAUGHTER	ADULT
12. MUGITO MARETE	DAUGHTER	ADULT

As children of the decease, they argued that their consent ought to have been obtained as by law required. According to them none was sought or obtained; they did not consent to the making of the Grant of Administration to the Petitioner. They also claimed that they were not present in court on 20th May 2008, when the grant was confirmed. In addition, they stated that Ken Bundi, Ernest Mureri, Alex Gikunda, Mawira Mwiti and Mwimenyeri Mwiti were not entitled to a share of the estate as they were not being maintained by the deceased prior to his death. Moreover, they averred that the 3rd interested party (wife to the deceased) was the one entitled to apply for Grant of letters of administration in respect of the estate of the deceased in priority to the Petitioner. Consequently, the Applicants urged the court to allow the application.

[6] The 6th to 10th Applicants case was that *inter alia* that they were dependants of the deceased and that

the Petitioner failed to disclose to them the manner in which he distributed the assets forming the estate. They also claimed that they did not sign the consent to filling of this succession cause or to distribution of the estate. In a rejoinder to the averments in the Petitioner's Replying Affidavit, the 6th to 10th Applicants denied that the deceased had left any will and contended that the document purported to have been made by their father on 30th September 2006 was not made by their father and that some of the persons whom the Petitioner shared the assets forming the estate were not beneficiaries in the estate. In their submissions, the 6th to 10th Applicants emphasized that they were not notified of the filing of the Succession Cause and the Confirmation Grant and that this denied them the opportunity of refuting any facts regarding the persons who had been named as beneficiaries of the estate. They also stressed that the issue of the deceased's will was raised after the application for revocation was made and that no will had been lodged with the court at the time of filing the Petition. The Petitioner filed the Succession Cause as intestate and was determined as such. They urged the court to revoke the grant on the basis of the grounds presented to court.

Petitioner returned fire

[7] The Petitioner opposed the two applications via Replying Affidavits filed in court on 29th June 2012 and 23rd September 2012. In those affidavits, the Petitioner deposed *inter alia* that these applications had been overtaken by events and that the Applicants had consented to the filing of the succession cause. He averred that the applicants were fully aware of and did not object to these proceedings. He further deposed that the deceased estate was distributed in accordance with the deceased's wishes and agreement of all members of the larger family.

[8] Other affidavits in opposition to the applications were sworn by Lucy Kathuni and Ernest Mureri who deposed that they were the 5th wife and grandson of the deceased respectively. The two claimed that Revocation of Grant is not merited as the distribution of the estate was fair.

[9] The Petitioner also submitted in support of his case and argued that the deceased left a will which was in English and Kimeru language and that there was no allegation that the will was wrong. It was also submitted that some beneficiaries had since sold their shares and therefore it was too late in time to seek Revocation of Grant. Consequently the Petitioner urged the court to dismiss these applications.

DETERMINATION

Threshold of law on revocation

[10] I need not re-invent the wheel. The legal threshold for revocation of a grant is set out in section 76 of the Law of Succession Act as follows:-

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 order or allow; 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.

[11] And upon careful consideration of the facts of this case, the court should seek to establish whether:-

(a) The proceedings to obtain the grant were defective in substance; or

(b) 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; or

(c) 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

[12] I have carefully looked at the Consent to Confirmation of Grant. It was purportedly signed by only 5 beneficiaries namely Ernest Mureri, Joyce Ngugi, Justus Mbaabu, Janet Karuki and Francis M Jason. Some of the beneficiaries who allegedly signed the form have renounced their signatures saying the same were forgeries. Accordingly, from the record and matters argued before the court, it is evident that some of the beneficiaries did not give their consent to the making of the Grant herein. Applying the test of law, the only logical inference that can be made is that the Grant was *inter alia* obtained by concealment of a fact material to the case. And the consequence of that lapse is that the grant becomes a candidate for revocation. On this see the case of **SAMUEL WAFULA WASIKE -vs- HUDSON SIMIYU WAFULA CA NO.161 OF 1993** (Kwach, Omolo and Tunoi JJA) where it was held that:-

“A grant obtained on the strength of false claims, without obtaining the consent of persons who had prior right to the grant and on the basis of facts concealed from the court, is liable to revocation.”

See also what Koome J (as she then was) stated in **THE MATTER OF THE ESTATE OF NGARI GATUMBI ALIAS JAMES NGARI GATUMBI (DECEASED NAIROBI HIGH COURT SUCCESSION CAUSE NO.783 of 1993** (persuasively) that:

“A grant will be revoked where a person who is entitled to apply is not notified by the petitioner of their intention to apply and that person’s consent to the petitioner’s application is not sought.

But before I close, I must say that I note with concern that the petitioner who is alleging existence of a will did not petition for grant of probate with will annexed as required in law. Instead the Petitioner was **“petitioning for grant of letters of administration intestate to the estate of M’ Marete Kanampiu.....”** But, I should not delve into the matter of the will given my orders below. It is sufficient to find that, following my conclusion that the Applicants were not notified of and did not give their requisite consent to these proceedings, the applications dated 16th February 2012 and 13th August 2012 are merited and I accordingly allow them. In the upshot, I revoke the grant issued herein. This being a succession matter, I order each party to bear own costs. It is so ordered.

Dated, signed and delivered in open court at Meru this 22nd day of February 2017

F. GIKONYO

JUDGE

In the presence of:

M/s. Mbaikiata advocate for Petitioner

Mr. Gitonga advocate for 1st -5th interested party

Mrs. Ntarangwi for 6th – 10th interested party.

F. GIKONYO

JUDGE