



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MOMBASA

SUCCESSION NO. 355 OF 2005

IN THE MATTER OF THE ESTATE OF RAMLA SALIM

NASSIR MOHAMED OMAR.....APPLICANT

VERSUS

SAID ABDALLA HUSSEINRESPONDENT

RULING

1. The deceased to whose Estate the proceedings herein relate is Ramla Salim (“the Deceased”), who the record shows died intestate on 4.4.93 at Tudor Mombasa. The record further shows that a Grant of Letters of Administration was issued to Said Abdalla Hussein a nephew of the deceased on 12.10.05.
2. In his Affidavit in support of Petition for the Grant, the Respondent claimed that the Deceased was survived by himself and Inant Bint Hussein, a sister. The estate consists of 1/5 share of Plot No. Lamu Island/Block III/130. The said Grant was confirmed on 28.7.06 and the estate of the deceased was to be distributed amongst the beneficiaries in equal shares.
3. By the Summons dated 24.11.09 Nassir Mohammed Omar the Applicant seeks revocation of the Grant on the grounds that:
 - i. the proceedings to obtain the Grant were defective in substance
 - ii. the Grant was obtained fraudulently by making false statements and/or by the concealment from the Court of material facts to the cause.
 - iii. The Grant was obtained by means of untrue allegations of facts to justify the grant.
4. The Applicant claims that the proceedings were defective in that the Grant was made in this cause instead of Succession Cause No. 40 of 2005 which is still pending. Further that the petition was filed without notice to persons entitled. The Applicant alleges that the Grant was obtained fraudulently in that the Respondent purported to be a person entitled to apply for the same a lawful beneficiary of the Deceased when he knew he was not. Further, that the Respondent fraudulently obtained a death certificate for the Deceased containing false information and presented the same for purposes of obtaining the Grant.
5. Apart from a Memorandum of Appearance, nothing else was filed on behalf of the Respondent. The Respondent was served with a hearing notice but failed to attend Court.
6. In his testimony in support of his Application, the Applicant stated that the Deceased is his paternal grandmother; that he and his siblings are children of Mohamed Omar Mohamed, son of the Deceased and

therefore the rightful beneficiaries of the Deceased. He states that he petitioned for a grant in Succession Cause No. 40 of 2005. That the estate comprised of a portion of Lamu Island/ Block III/130. That the Respondent also obtained a grant in respect of the estate of Raya Salim and Ahmed Hussein the other registered owners of the said property. The Applicant further states that the Respondent obtained a death certificate for the Deceased on 4.4.93 before her demise. The death certificate states that the Deceased died in Tudor, Mombasa. The truth of the matter is that the Deceased died on 9.10.93 in Shella, Lamu.

7. The Applicant states that he and his 8 siblings, Ahmed Mohamed Omar, Omar Mohamed Omar, Hafwa Mohamed Omar, Eisha Mohamed Omar, Sauda Mohamed Omar, Khadija Mohamed Omar, Sofia Mohamed Omar and Thuweka Mohamed Omar have been disinherited by the Respondent who subdivided the land and gave it to his children. He prayed that the grant be revoked and asked the Court to assist them get their rightful share of the estate of the Deceased.

8. The law relating to revocation of grants is found in Section 76 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. 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. ...

9. As stated earlier, the Respondent did not file any response to the Summons herein. The testimony of the Applicant is therefore uncontroverted.

10. The Applicant states that he applied for a grant of representation in Succession Cause No. 40 of 2005. I have taken time to peruse the said file and do confirm that a petition had indeed been filed by the Applicant in that cause on 11.2.05 and that that cause was filed earlier in time than the cause herein which was filed on 11.8.05. In the circumstances, the proceedings to obtain the grant herein were defective in substance.

11. The Applicant claims that he and his siblings are grandchildren of the Deceased. Their father Mohamed Omar Mohamed was a son of the Deceased. The Respondent in his petition claimed that only he (a nephew) and Inant Bint Hussein (a sister) survived the Deceased. He did not disclose that the Applicant and his siblings survived the Deceased. As a result, 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.

12. In view of the foregoing, I do allow the Summons for Revocation dated 24.11.09 and Make the following orders:

i. The Grant of Letters of Administration in respect of the estate of Ramla Salim issued to Said Abdalla Hussein on 12.10.05 and confirmed on 28.7.06 is hereby revoked.

ii. All consequential transactions effected pursuant to the said Grant are hereby revoked and 1/5 share of the Plot No. Lamu Island/Block III/130 shall forthwith revert to the estate of the Deceased.

DATED, SIGNED and DELIVERED in MOMBASA this 17th March 2017

M. THANDE

JUDGE

In the presence of: -

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

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

..... **Court Assistant**