



**REPUBLIC OF KENYA**

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

**SUCCESSION CAUSE NO. 2747 OF 2002**

**IN THE MATTER OF THE ESTATE OF STANLEY FRANKLIN HABWE (DECEASED)**

**RULING**

1. On 2<sup>nd</sup> May 2014 I delivered a ruling on a confirmation application dated 30<sup>th</sup> September 2008. The sole asset, LR No. 7788/18, was devolved upon the widow and children of the deceased. The ruling provoked two applications for revocation of grant. The first, dated 9<sup>th</sup> February 2016, was at the instance of the persons named in the ruling of 2<sup>nd</sup> May 2014 as the beneficiaries of LR No. 7788/18. They sought the removal of the administrators. The second application dated, 6<sup>th</sup> June 2016, was at the instance Violet Habwe, a sister of the deceased. She sought revocation of the certificate of confirmation of grant issued consequent to the order of 2<sup>nd</sup> May 2014.

2. I directed on 27<sup>th</sup> July 2016 that the two applications be disposed of simultaneously orally. I allocated them hearing dates on 7<sup>th</sup> November 2016, 8<sup>th</sup> November 2016, 9<sup>th</sup> November 2016 and 9<sup>th</sup> November 2016. Come 7<sup>th</sup> November 2016, the applicants were not ready to present their case, and the matter was adjourned to 8<sup>th</sup> November 2016. Come 2<sup>nd</sup> November 2016, the applicants in the application dated 9<sup>th</sup> February 2016 did not attend court, but the applicant in the second application was in court and she testified. Her testimony effectively was to show that the widow of the deceased was not interested in the estate. She had relocated to the United States of America and had intimated to her that she had left Kenya for good. She went on to state that the widow had since remarried although she could not provide evidence thereof. She also argued that the subject property was family property, where her siblings reside whenever they happen to be in Kenya.

3. The matter was thereafter allocated dates for further hearing on 23<sup>rd</sup> January 2017, 24<sup>th</sup> January 2017 and 25<sup>th</sup> January 2017. However, the matter did not proceed on those dates as the applicants in the second application did not avail themselves for hearing. The application was then stood over generally but as the application dated 9<sup>th</sup> February 2016, was unopposed it was ruled that the same would be determined. The parties also asked the court to call for the file in HCSC No. 1073 of 2002, in the matter of the estate of the mother of the deceased. It was urged that LR No. 7788/18 had also been listed in that cause as part of the estate of the deceased.

4. The application dated 9<sup>th</sup> February 2016 is premised on section 76 of the Law of Succession Act, Cap 160, Laws of Kenya. It seeks revocation of a certificate of confirmation of grant rather than of the grant of representation itself. Section 76 is designed for revocation of grants not the certificates issued upon the confirmation of the grant. A confirmation of a grant does not change the character of the grant. The grant appoints the administrator or confirms the appointment of an executor and grants him the powers that go ahead with administration of estates and imposes the duties concomitant therewith. A certificate of confirmation of grant is nothing more than a formal extraction of orders made by a court at the event of the confirmation of grant. Whereas grants are revoked, certificate of confirmation of grant are canceled upon the setting aside of the orders made confirming the grant. A party aggrieved by confirmation orders should either appeal against them or lodge an appeal or apply for their setting aside or reversal.

5. The grounds set out in section 76, upon which a grant may be revoked, are explicit that section 76 is about grants of representation not certificates of confirmation. The first general ground is that a grant is liable for revocation where the process of obtaining it and, not the certificate of confirmation of the grant, was defective and fraudulent. The second ground relates to the administration process itself after the grant has been made. A grant may be revoked where the grant holder fails to apply for confirmation of grant

within the period stipulated in law, or where the grant holder has not diligently administered the estate, or has failed to render accounts, or the grant has become useless and inoperative. On that score therefore the application dated 9<sup>th</sup> February 2016 cannot be competent.

6. The application appears to be founded on the claim that the estate asset, LR No. 7788/18, was family property registered in the names of the deceased, his father and mother. That claim appears to have been made in ignorance of what the court stated in paragraph 20 of the ruling delivered on 2<sup>nd</sup> May 2014.

7. For avoidance of doubt, the paragraph 20 of the ruling of 2<sup>nd</sup> May 2014 reads as follows:-

*'The only asset making up the estate is LR No. 7788/18. The said asset was acquired by the father of the deceased, Eli Habwe, in 1965. In 1977 it was transferred to Eli Habwe, Ruth Mical Habwe and Stanley Franklin Habwe as joint tenants. Eli Habwe and Ruth Mical Habwe were the parents of deceased herein Stanley Franklin Habwe. The said parents died on 11<sup>th</sup> February 1984 and 21<sup>st</sup> April 1996, respectively. Given that the two were joint tenants with the deceased with respect to ownership of LR No. 7788/18, following their deaths their interests in the estate united or merged with that of the deceased by virtue of the principle of jus accrescendi and became the property of the deceased. The interest of the deceased parents of the deceased was lost as they united with the interest of the deceased, and therefore was not available for distribution as part of their estates. The property is now only available for distribution as an asset in the estate of the last tenant, Stanley Franklin Habwe. The siblings of the deceased therefore have no claim whatsoever to the estate unless or until the widow and children renounce their shares or interests in the estate.'*

8. The applicant has not sought to demonstrate that the finding of the court in said paragraph 20 of the ruling of 2<sup>nd</sup> May 2014 was flawed, so flawed indeed that it necessitated the setting aside of the final orders made on the application. No arguments of any character have been made before me indicating that the court was in error in applying the principle of *jus accrescendi* in the circumstances. In any event, if the applicant felt that the court wrongly applied the law in the circumstances, she should have appealed against the orders made in the ruling of 2<sup>nd</sup> May 2014. It could be that after the death of the deceased's mother and father the particulars of registration of LR No. 7788/18 were not updated to reflect the deceased as owner of that property by survivorship. That is neither here nor there, the fact remains that the three were registered as joint tenants and the principle of *jus accrescendi*.

9. It is argued that the widow has stated categorically that she would not be coming back to Kenya. The applicant has not provided any material to back that allegation. In any event, even if that were true, the same would not amount to a renunciation. A person who has relocated or emigrated to another country does not lose their right to property that has accrued to them through inheritance. The other argument is that she has remarried. No documentary proof of that allegation was provided. Even if that were so, section 35(1)(5) of the Law of Succession Act would still apply, so that the children of the deceased would be entitled to taken the property equally between them to the exclusion of their mother.

10. I was told that LR No. 7788/18 is listed in the matter of the estate of the mother of the deceased in HCSC No 1073 of 2002, and I was asked to vacate the confirmation orders so as to pave way for disposal of HCSC No 1073 of 2002. I wish to reiterate what I have stated in paragraphs 9, 10 and 11 hereabove, and state that by survivorship the interests of the deceased's father and mother were extinguished following their respective deaths, and as at the date of the deceased's death the subject property had become that of the deceased. The prosecution of HCSC No 1073 of 2002 will not change the facts and the law.

11. There is no merit in the application dated 9<sup>th</sup> February 2016. I shall and do hereby accordingly dismiss the same. Costs shall be in the cause.

**DATED, SIGNED and DELIVERED at NAIROBI this 12<sup>TH</sup> DAY OF MAY, 2017.**

**W. MUSYOKA**

**JUDGE**