



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NYERI
SUCCESSION CAUSE NUMBER 126 OF 2013
IN THE MATTER OF THE ESTATE OF I G G alias G G (DECEASED)

J M G.....PETITIONER/RESPONDENT

VS.

L W W..... OBJECTOR /APPLICANT

RULING

1. Before me is the Summons for revocation of Grant dated 19th January 2016. It is brought under s.76 of the Law of Succession Act Cap 160 Laws of Kenya and Rule 44 of the P&A rules.
2. L W W the applicant states on the face of the Summons that she seeks orders revoking the grant of letters of administration intestate made to J M W, the petitioner/respondent on the 13th of February 2014 with respect to the Estate of I G G who died on the 8th June 1985.
3. The grounds for the application are set out as that;
 - a. The proceedings to obtain the grant were defective in substance,
 - b. The grant was obtained fraudulently by making of a false statement or by concealment of something material to the case,
 - 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.
4. In the supporting affidavit sworn on the 19th January 2017, the applicant deponed that the respondent Jackson M W is a brother to her mother W W. That the deceased had two wives, N G, the mother to her mother and N G, the mother to the respondent.
5. That W W occupied and utilized half share of the deceased property MUHITO/GATURIA/731 during her lifetime while the respondent occupied and utilized the other half.
6. That upon the death of their father, I G G, the applicant's mother W W filed KARATINA PM SUCCESSION CAUSE NO. 47 OF 1998 claiming her half share of this property.
7. That W W passed away in 2012 before the completion of the Succession cause and the applicant herein was substituted for her.

8. The certificate of grant of letters of administration intestate in the Karatina Succession cause was confirmed on the 12th June 2014. The estate of the deceased MUHITO/GATURIA/ 731 was determined to be distributed in equal shares to the applicant and the respondent This is because in the affidavit in support of the confirmation of the grant the applicant's mother had identified the respondent as the only other beneficiary to the deceased's estate.

9. It is when the applicant took the documents to the Land registry to facilitate the transmission of the estate to herself and the respondent that she found, to her utter shock and disbelief, that the respondent had secretly and fraudulently initiated these proceedings in the High Court without disclosing her interest in the estate.

10. The respondent had proceeded to inherit the whole estate by himself.

11. That the respondent was served with all the documents in the lower court succession cause but had refused to participate in the proceedings.

12. The record will show that when the matter came before Hon. Justice Mativo on the 2nd November 2016, he made an order that all the surviving beneficiaries be served to attend court. Eight persons were identified. On the 1st March 2017, four of the beneficiaries appeared in court. The other four including the respondent did not appear. Directions were given that the four could agree among themselves who would testify on their behalf and file a response to the Summons for revocation of grant

13. The matter was fixed for hearing on 23rd March 2017 with an order that the remaining beneficiaries be served afresh. On the 23rd there was evidence of service but none of the beneficiaries was present.

14. The matter proceeded for hearing. The applicant in her testimony reiterated what was in her supporting affidavit. She told the court that in her mother's house they were four siblings. That she took over her mother's succession cause Karatina PM Succession Cause no 47 of 1998 after her mother's death in 2012 and was issued with a confirmation of grant but upon visiting the lands office had found that the respondent had transferred the whole parcel of land to himself.

15. She called one witness, G W W, a sister to her mother. Grace told the court that in her mother's house they had only one brother G G but that he was mentally handicapped. That when their mother died, her sister the applicant's mother, who was married nearby took him in and took care of him up to the time she died. He also died.

16. According to Grace, the deceased had divided his land between the two wives N and N. That her mother's share of the estate would have gone G G, just like the respondent's mother's share went to him. But because of G's disability W the applicant's mother while taking care of him had also cultivated his portion of the land. Hence his share ought to be given to W, the sister who took care of him.

17. The issue then is whether the grant issued to the respondent ought to be revoked.

18. I have carefully considered the application, the supporting affidavit and the oral evidence given in court.

19. I have perused the file and noted the following;

a. A letter from the Chief Muhito Location dated 8th June 2011 confirming that I G G died on 8th June 1985, and was the registered owner of parcel no. MUHITO/GATURIA/731

b. According to this letter, the heirs to I G G were;

i) F G M- son 63 years

ii) A N M- daughter 58 years

iii) G W K- daughter 53 years

iv) J M W –son 60 years.

b. The petition for grant of letters of administration intestate supported by consents from the other three beneficiaries as listed above.

c. A summons for the confirmation of grant supported by affidavit dated 2nd December 2013. Notably in the affidavit the petitioner/ respondent deponed that the deceased died on 13th March 1970 contrary to the certificate of death.

d. A certificate of confirmation of grant dated 13th February 2014 to the effect that the title MUHITO/GATURIA/731 be transferred to the respondent.

20. Clearly the respondent concealed from the court the existence of the first family – he never mentioned his mother N G, nor the grandmother to the applicant N G.

Nor did he mention the step siblings to wit;

i. W N

ii. K K

iii. W W

iv. K K

v. G G

vi. W W

21. From the applicant's affidavit and the testimony given in court the respondent's father had two wives. The only son of the 1st wife was mentally handicapped and his sister took care of him, while cultivating their mother's portion of the land. The respondent did also not disclose this fact to the court.

22. The respondent was served. He did not come to court or file anything in response to the summons for the revocation of the grant.

23. Section 76 of the Law of Succession Act Cap 160 Laws of Kenya provides for the revocation of grants on the following grounds *inter alia*;

(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;

24. In her testimony the applicant demonstrated that the respondent concealed material facts from this court. That there were other beneficiaries to the deceased's estate, that his sister had also filed a succession cause before the Karatina PM's court, that she had been utilizing that land all along, and that the applicant was in occupation of the said parcel of land. The respondent also deliberately made untrue

allegations when he placed before the court evidence that the deceased was only survived by him and the children of his mother's house.

25. Section 71 of the Law of Succession Act Cap 160 Laws of Kenya provides for the confirmation of grant, Provided that, in cases of intestacy, the grant of letters of administration shall not be confirmed until the court is satisfied as to the respective identities and shares of all persons beneficially entitled; and when confirmed such grant shall specify all such persons and their respective shares.

26. The grant would not have been confirmed in the terms it did if it had had the benefit of all the information that the respondent had concealed from it. It is worth noting that when his sister W W filed the matter in Karatina PM's Court, she did not conceal his existence. It would appear that it is upon her death that he chose to file this matter in the High Court without telling the court the whole story. That makes the grant herein wrong together with all the actions done consequent to it confirmation.

27. I find therefor that the application has merit and issue the following orders;

1. The grant of letters of administration intestate issued on 23rd April 2014 and the certificate of confirmation of grant issued on the 13th February 2014 with respect to the estate of I G G alias G G are hereby revoked.
2. Similarly, the Certificate of Confirmation of grant in Karatina PM Succession Cause no 47 of 1998 issued on the 12th June 2014 and the related grant of letters of administration intestate with respect to the estate of I G G alias G G are both revoked
3. The transfer of the title Muhito/Gaturia/731 to J M G is hereby cancelled.
4. A fresh grant of letters of administration intestate shall issue to J M G and L W W
5. Either party or both of them be at liberty to file a summons for the confirmation of grant within 30 days hereof.
6. All surviving beneficiaries be served.
7. There shall be no orders as to costs.

DATED, SIGNED AND DELIVERED AT NYERI THIS 5TH DAY OF MAY 2017.

TERESIA MATHEKA

JUDGE

In the presence of;

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Court assistant Teresia

Right of appeal 30 days

Teresia Matheka

Judge