



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU
SUCCESSION CAUSE NO.128 OF 1993
IN THE MATTER OF THE ESTATE OF THE LATE KEVIN KULOVA KOKONYA –
(DECEASED)

RULING

1. This ruling is in respect of the summons for revocation of grant dated 2nd June, 2015.
2. The prayers sought are:
 1. Spent
 2. Spent
 3. Spent
 4. That the Letters of Administration issued to the late JOYCE NEKESA KOKONYA on 19th July, 1993 be revoked.
 5. That the Grant of Letter of Administration issued *de bonis non administratis* in the names of CYNTHIA MUKOYA KOKONYA, VICTORIA MUVOKU KOKONYA and ALEXSANDRA NABUCHA KOKONYA be revoked.
 6. That the Certificate of Confirmation of Grant issued to the Administrators on 26th June, 2013 be revoked.
 7. That the costs of this application be provided for.
3. The summons is supported by the affidavit of Saad Salim Mulova and on grounds that:
 1. That the grant was obtained fraudulently by the making of a false statement to the court.
 2. 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.
 3. That Saad Salim Mulova, beneficiary/applicant has been the deceased's person's dependant to the point of his death.
4. That Saad Salim Mulova, dependant/applicant is one of the beneficiaries of the estate of the late KEVIN KULOVA KOKONYA by virtue of being his son.

5. That when the deceased passed on, his (dependant/applicant) step mother one JOYCE NEKESA KOKONYA and subsequently his step sisters CYNTHIA MUKOYA KOKONYA, VICTORIA MUVOKA KOKONYA and ALEXSANDRA NABUCHA KOKONYA took out Letters of Administration and later on a Certificate of Confirmation of Grant without his knowledge or consent.

6. That he (dependant/applicant) did not know what was going on in court with regard to this matter, until recently when he got information that the only people that were confirmed as being the beneficiaries of the late KEVIN KULOVA KOKONYA were CYNTHIA MUKOYA KOKONYA, VICTORIA MUVOKA KOKONYA and ALEXSANDRA NABUCHA KOKONYA completely leaving him out.

7. That allowing the administrators, CYNTHIA MUKOYA KOKONYA, VICTORIA MUVOKA KOKONYA and ALEXSANDRA NABUCHA KOKONYA to inherit the entire property of the late KEVIN KULOVA KOKONYA will totally disinherit and tender him vagabond.

4. The gist of the applicant's case is that the administrators herein did not disclose the full extent of the estate. The administrators also left out the applicant, a beneficiary, when petitioning for grant yet, he (the applicant) was a son of the late Kevin Kaluva Kokonya.

5. By the time the petition was gazetted, the applicant was a minor and hence would not exercise his legal rights.

6. The application is opposed and in a replying affidavit, Alexandra Nabuche Kokonya with authority from the co-respondents has deponed that the application for and confirmation of grant was not fraudulent, based on false facts or concealment as alleged.

7. The confirmation of grant was regular and involved only one property being LR. NO.209/8593/47 (L.R. NO.36692) and which she refers to as the "*Nairobi home*". This property was the matrimonial home of the parents and was registered in the joint names. A copy of title is exhibited which shows the deceased and one Joyce Kokonya as joint tenants as lessees.

8. It is urged that the applicant might have been acknowledged as an issue of the deceased but he was unknown to the respondents until recently. He has not produced documentary evidence to prove his relationship if any with the deceased.

9. It is averred that investigations have revealed that part of the assets listed on the petition are no longer part of the deceased's estate and others are unknown to the respondents and the respondents have no control of the assets. The affected properties are listed as:

1. ADC Plot Sold by Agricultural Development Corporation (ADC) for non-payment of their loan
2. Plot in Bungoma Unknown to the Respondents
3. Plot n Ngong-Ongata Rongai Unknown to the Respondents
4. Plot in Umoja -Nairobi Unknown to the Respondents
5. Kokonya Investments Limited (Egret Hotel) Sold to offset the Deceased's debts immediately after his demise
6. Carrea Air Investments Limited Unknown to the Respondents

10. The respondents are willing to engage the applicant on the modalities of how the deceased's estate will be distributed as soon as he is able to fully prove his dependency. It is sought that the application for revocation be dismissed.

11. In a supplementary affidavit by the applicant he adds that at the time the grant was made in 2013 he was already known to the respondents since it was after the 2010 meeting. He adds that he has attached a birth certificate to show the deceased was his father. He annexes an affidavit by the Respondents' mother in an application for limited grant where she (the mother) acknowledges him as a dependant of the deceased.

12. This application was canvassed by way of written submissions. Both counsels' submissions are on record.

13. I have had occasion to consider the summons, the supporting and supplementary affidavit, the replying affidavit and submission on record.

14. Of determination is whether the applicant has achieved the threshold set in **Section 76** of the **Law of Succession Act** for revocation of a grant. **Section 76** provides:

“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:-

- 1. that the proceedings to obtain the grant were defective in substance;**
- 2. 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;**
- 3. 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;**
- 4. 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 has ordered or allowed; 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**
- 5. that the grant has become useless and inoperative through subsequent circumstances.”**

15. The applicant claims that he was omitted as a beneficiary when the grant was obtained and confirmed. He has attached a birth certificate in prove that he is a son to the deceased. And whereas this is not conclusive evidence of paternity, there is no rebuttal to this fact other than mere denials in the replying affidavit.

16. Indeed, in the replying affidavit, the respondents blow hot an cold at the same time, at some point acknowledging the existence of the applicant as a son (only that he was unknown to them by the time of grant) and at some point denying him in totality.

17. The claim by the applicant is given further credence by the sworn affidavit of Joyce Nekesa Kokonya sworn on 19th July, 1993 and annexed to the applicant's affidavit in which she lists the applicant as a son of the deceased. Notably, the said Joyce was the wife to the deceased herein.

18. By failing to include the applicant as a dependant of the deceased whether intentionally or through ignorance or inadvertently, the respondents rendered the grant one subject to revocation under Section 76.

19. In the premises the grant herein cannot stand in its current form.

20. The applicant has raised issues on some alleged omitted properties which fact is contested. I prefer that that dispute be resolved in the main cause once a fresh grant is issued.

21. With the result that the summons herein is allowed in terms of prayers 4 and 5. To restart the administration of the estate of the deceased, I order that a fresh grant of letters of administration be issued in the names of Cynthia Mukoye Kokonya, Victoria Muvoka Kokonya, Alexandra Nabucha Kokonya and Saad Salim Kulova.

Order accordingly.

Dated, Signed and Delivered at Nakuru this 12th July, 2017.

A. K. NDUNG'U

JUDGE