



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 333 OF 2011

**IN THE MATTER OF THE ESTATE OF JAMUEL MUCHIRI KIRAGU ALIAS SAMUEL
MUCHIRI KIRAGU (DECEASED)**

RULING

1. The estate to whom these succession proceedings relate died intestate on 16th April 2010. **Grace Nungari Muchiri** the deceased's widow cited her son **Nicholas Jackson Kamau** to accept or refuse letters of administration and proceeded to petition for grant of letters of administration. All the beneficiaries save for **Nicholas** consented to **Grace** taking out grant of letters of administration. **Grace** was issued with grant of letters of administration intestate on **18th October 2011**. This prompted the applicant **Nicholas** to file the current application dated 28th September 2012 seeking revocation of the said grant on grounds that;
 - i. **The grant was obtained fraudulently by making false statements and concealment of material facts.**
 - ii. **The proceedings to obtain the grant were defective and incompetent in substance.**
 - iii. **The grant was obtained by means of untrue allegations of a fact essential in law.**
2. In his affidavit in support of the said application dated the 28th of September 2012 and his supplementary affidavit dated the 29th of October 2014; he avers that the respondent concealed from the court that he was never served with the application for issuance of the letters of administration, that he was left out as a son of the deceased and as a result was denied a right to inherit the deceased. That after he warned his father that his food was laced with poison the petitioner disappeared and his father married **Teresia Njeri** as a second wife and the petitioner reappeared after the demise of his father but she has never forgiven him despite his countless apologies. That the petitioner lied to the court that he had refused to sign the petition forms and served him with the citation form and thereafter he filed a memorandum of appearance and the court file went missing thereafter. That if the grant is confirmed he shall be defrauded of his rightful and legal inheritance as a beneficiary. Further the petitioner did not reveal some properties namely, **a residential house Eldoret 096 West Indies, motor vehicle pickup registration no. KSC 329 Mazda, she has the log book, and tractor registration no. KUE 073 make Ford-U.K** and that she did so internationally since she filed a case at Chief Magistrates' court in Eldoret. That the petitioner had gone ahead to file a suit to evict tenants in Eldoret as evidenced by civil suit no.727 of 2012 in Eldoret Law courts. He further added that the respondent had even sold some of the assets forming part of the deceased's estate and as such the applicant who is the sole administratrix of the deceased's estate cannot be entrusted with the deceased's estate's assets and urged the court to annul the said grant issued to the respondent on 18th October 2011. Further, that the deceased had a bank account no. 030036000953 with Barclays Bank which he had deposited over 2 million shillings, which has been concealed from the other beneficiaries.
3. The respondent in reply to the said allegation filed her replying affidavit dated 16th October 2012;

she avers that the application is incompetent and does not meet the threshold of **Section 76** of the Law of succession Act. That having been served with the citation as per the return of service sworn by Boniface Nganga Ngaara and claiming that there was concealment of material facts was misleading. That she followed the right channels to obtain the said grant being the wife of the deceased and ranking in priority to the applicant. That it was fallacious for him to argue that the proceedings followed in obtaining the said grant were defective and incompetent in substance. Further that she disclosed that the applicant was a son to the deceased in the said citation adding that the applicant's application for revocation for grant are far-fetched and the same are just mere allegations without any basis in law of fact and urged the court to dismiss the application.

4. Parties agreed to proceed by way of written submissions. A perusal of the file reveals that only the applicant filed written submissions which I have read and considered.
5. The applicant based his application on **Section 76** of the Law of Succession Act Cap 160, which provides that, "**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;"

6. A perusal of the petition for grant of letters of administration made by the respondent it is clear that the applicant was listed as a beneficiary of the deceased save that he is the only one who did not sign the consent accompanying the said petition for the said grant. Prior to this, I note that the applicant had been cited to accept or refuse letters of administration intestate issued by Murang'a Court on 1st April 2011. There is an affidavit of service by **Boniface Nganga Ngaara** dated **13th June 2010** stating that he effected service on the applicant on **10th May 2011** but he refused to sign. I note that the said affidavit appears to have been done a year before, in my view it could be a typing error as the applicant admits he was served with the citation and he entered appearance.

7. However, I find that since the applicant ranked in priority and rule 26 of the Probate and Administration provides that, "**(1) Letters of administration shall not be granted to any applicant without notice to every other person entitled in the same degree as or in priority to the applicant.**" This does not apply to the applicant as the petitioner was not required to cite the applicant herein whilst petitioning for grant of letters of administration as this is only a requirement where the applicant ranks in equal degree or lower as provided for under rules 26(2) "**An application for a grant where the applicant is entitled in a degree equal to or lower than that of any other person shall, in default of renunciation, or written consent in Form 38 or 39, by all persons so entitled in equality or priority, be supported by an affidavit of the applicant and such other evidence as the court may require.**"

6. The deceased to whom these succession proceedings relates is survived by his wife and children and hence the same devolves under Section 35 of the Law of Succession Cap160. Section 66 of the Law of succession Act provides that, "**when a deceased has died intestate, the court shall, save as otherwise expressly provided, have a final discretion as to the person or persons to whom a grant of letters of administration shall, in the best interests of all concerned, be made, but shall, without prejudice to that discretion, accept as a general guide the following order of preference-** (a) **surviving spouse or spouses, with or without association of other beneficiaries;**

(b) other beneficiaries entitled on intestacy, with priority according to their respective beneficial interests as provided by Part V;" The deceased to whom these succession proceedings relates is survived by his wife and children and as such the wife ranks in priority to take out or petition for

grant of letters of administration. The respondent in this case was in my view the person best placed to petition for the grant.

7. From my above findings I find that the respondent had exercised due diligence in obtaining consent and pursuing the succession matter. I find that the applicant has not proved any defect in the proceedings nor that the grant obtained was defective in substance and neither any fraud by the respondent or false statement or concealment of from the court of something material to the case that being the case .I find no reason to revoke the grant of letters of administration made to **Grace Muchiri Nungari**. The applicant's application fails. I however note that some issues are emerging; there is a claim from the applicant that some assets and liabilities and also enjoining of the applicant as a co-administrator. These issues came out in submissions stage and the respondent could not have had an opportunity to respond to them. I believe the beneficiaries ought to have a say on administration of the deceased's estate I therefore order that all beneficiaries of the deceased to meet within 40 days from the date of this ruling and agree on who can join Grace as a co administrator and what forms the deceased's estate's assets and liabilities. Parties to have this matter mentioned within 40 days from the date of this ruling to enable the court give directions on how to proceed. Cost shall be in the cause. It is so ordered.

Dated, signed and delivered this *5th* day of *February* 2016.

R. E. OUGO

JUDGE

In the presence of;

.....**For the Applicant**

.....**For the Respondent**

MS. Charity

Court Clerk