



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

SUCCESSION CAUSE NO. 374 OF 2013

IN THE MATTER OF THE ESTATE OF NYAMAI KALILI(DECEASED)

KALUBE NYAMAIPETITIONER

VERSUS

CHRISTINE KAVENI NYAMAI

JULIUS WALI NYAMAI

CHRISTOPHER MUSELI NYAMAI

DANIEL MASUNGU NYAMAI.....OBJECTORS

RULING

The Summons

The Objectors herein filed an application by way of Summons for revocation of grant dated 24th March 2015, where they sought orders that the grant of letters of Administration made to the Petitioner herein on 19/9/2013 be revoked. The application was based on the grounds that the Objectors were the widow, sons and daughters of the deceased. Further, that the proceedings to obtain the grant were defective in substance, and that the grant was obtained fraudulently by making of false statements; by concealment from the court of material facts; and by means of untrue allegations of fact. Lastly, that the Objectors consent was not sought at the time of filing the petition nor on the proposed distribution of the estate.

The Objectors filed an affidavit in support of the summons sworn by the 2nd Objector on 24th March 2015. They stated that the deceased had two wives, and that they came to learn of the succession cause when the Objectors summoned all the deceased children and wives before the county commissioner with a view of agreeing on the possibility of commencing succession proceedings. However, that the Petitioner declined to attend and wrote a letter to the Deputy County Commissioner indicating that he had filed a succession cause. The Objectors attached the said summons and a letter from the Petitioner's lawyers.

The Objectors stated that upon perusal of the court file they found out that the grant had been issued to the Petitioners on 19/9/2013, and that the matter had been scheduled for the confirmation on 25/3/2015 without their consent being sought as to the distribution of the estate. It was averred that the deceased beneficiaries were not all involved in taking up the grant, and also that not all of the deceased properties were included in the petition and had been left un-administered.

Further, the Objectors stated in a supplementary affidavit sworn by the 2nd Objector on 6th August 2015

that they had not been notified of any case requiring the 1st Objector and the Petitioner to take out letters of administration.

The Objectors' learned counsel, Kamolo and Company Advocates, filed submissions dated 12th November 2015, in which they submitted that even if the Petitioner had averred that the grant was filed following a court order he was obliged to call all beneficiaries and agree on an administrator(s) and require their consent in confirmation of grant on the distribution.

The Response

The Petitioner filed a replying affidavit sworn on 30th April 2015, wherein he stated that the proceedings to obtain the grant were accurate, just and unambiguous in substance. Further, that the grant was obtained following a court order by consent dated 12th February, 2013, where the order read that the first Objector (Christine Kaveni Nyamai) and the Petitioner (Kalube Nyamai) to jointly take out letters of administration within 45 days; in default either party could take out letters of administration.

The Petitioner stated that his advocate engaged the counsel from the Objectors in pursuit of the order to have both proposed parties be administrators, who did not respond. He therefore took out the letters of administration after the expiration of the given time, and upon the 1st Objector's failure to respond as per the court order.

J.A.& Makau Advocates, the learned counsel for the Petitioner filed submissions dated 15th December 2015, where it was argued that the Objectors were fully aware of the proceedings by the Petitioner in taking out letters of administration for the estate of the deceased. It was stated that the 1st Objector through her advocate on record entered a consent on 12/2/13, which was adopted in court and issued on 27/3/13. In addition it was contended by the Petitioner that he did not conceal anything in petitioning for letters of administration nor has he disinherited the Objectors.

The Issues and Determination

I have read and carefully considered the pleadings and submissions made by the Petitioner. The issue to be decided is whether the Respondents' grant of letters of administration should be revoked. This court has jurisdiction to revoke or annul the grant as is clearly set out in section 76 of the Law of Succession Act (Chapter 160 of the Laws of Kenya) which provides as follows:

“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) 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

(e) that the grant has become useless and inoperative through subsequent circumstances.”

In the present application the Administrators have denied the Petitioner’s averment that they were aware of the succession proceedings. I have perused the order given on 12th February 2013 and issued on 27th March 2013 that was attached as annexure “KN1” to the Petitioner replying affidavit. It is shown in the said order that the 1st Objector was the Citor in Machakos High Court Succession Cause No. 1003 of 2011 and the Petitioner the Citee therein. Leave was granted by this Court to the said Citor and Citee to both petition for letters of administration within 45 days from the date of the orders, failing which either party could do so. The Petitioner’s lawyer also attached a letter dated 4th April 2013 in which they sent the Petition for the 1st Objector’s lawyers for comment and/or signature. I also note that the summons sent by the Deputy County Commissioner to the Objectors and Petitioner is dated 10th March 2015, after the said citation proceedings.

I therefore find arising from the chronology of events as explained in the foregoing that there was no concealment of material facts or untrue allegations made by the Petitioner. This is for the reason that the Citor in the citation proceedings leading to the issue of the grant to the Petitioner was the 1st Objector, who is the mother of the other Objectors and had first priority among the Objectors to the issue of the grant. The Objectors are therefore deemed to be privy to the same. In addition, the 1st Objector was given the opportunity to be administrator of the deceased estate but failed to do so.

However, as the grant to the Petitioner has in the circumstances become inoperative, and in order to enable the administration of the deceased’s estate to proceed without further delay, I order as follows to enable the parties proceed with the issue of distribution:

1. The grant of letters of administration intestate issued to Kalube Nyamai on 19th September 2013 be and is hereby revoked.
2. A new grant of letters of administration intestate shall issue to Christine Kaveni Nyamai and Kalube Nyamai who shall be joint administrators of the estate of Nyamai Kalili (Deceased)
3. The said joint administrators shall file and serve upon the all the beneficiaries of the estate of Nyamai Kalili (Deceased) a fresh summons for confirmation of grant incorporating all beneficiaries and all of the deceased’s properties.
4. Thereafter the matter shall be fixed for directions before the relevant judicial officer.
5. There shall be no order as to costs.

Orders accordingly.

Dated, signed and delivered in open court at Machakos this 8th day of February 2016.

P. NYAMWEYA

JUDGE