



**REPUBLIC OF KENYA**

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

**PROBATE AND ADMINISTRATION DIVISION**

**SUCCESSION CAUSE NO. 2119 OF 2010**

**IN THE MATTER OF THE ESTATE OF MANASSEH MASEK JOSIAH KISOSO (DECEASED)**

**BETTY SATION KISOSO .....APPLICANT**

**- Versus -**

**PRISCILLA JERUTO KISOSO.....RESPONDENT**

**R U L I N G**

1. The deceased to whose estate these proceedings relate is Manasseh Masek Josiah Kisoso who died on 9<sup>th</sup> August 2009. A grant of Letters of Administration was made to Priscilla Jeruto Kisoso and Lucy Waithira Kisoso.
2. On 15<sup>th</sup> January 2015, Betty Sation Kisoso one of the beneficiaries filed an application by way of Summons for Revocation and/or annulment under **sections 46, 76(d), 83 (e) and (h), 95(a) and (b)** of the **Laws of Succession Act, Rules 44(1) and 75 Probate and Administration Rules**. In the application she seeks orders that the Grant of Letters of Administration made on 16<sup>th</sup> April 2011 to Pricilla Jeruto Kisoso and Lucy Waithira Kisoso be annulled and revoked, and the Court do appoint other suitable persons in their place to proceed with the administration of the deceased's Estate.
3. In the alternative the Applicant prays that the court do order the Respondent to produce to the court a full and accurate inventory of the assets and liabilities of the deceased and a full and accurate account of all dealings therewith up to the date of such account, and to complete the administration of the Estate in respect of all matters without any further delay and to produce to the Court a full and accurate account of all the completed administration.
4. The application is premised on grounds that the Respondent is one of the Administrators of the Estate of the late Manasseh Masek Josiah Kisoso, along with Lucy Waithira Kisoso, who passed away on 5<sup>th</sup> July 2012. That the two Administrators, have failed to complete the administration within the requisite period and that since the demise of the second Administrator, Lucy Waithira Kisoso in July 2012, no application has been brought to substitute her.
5. The application also alleges that one year since the Grant of Letters of Administration Intestate was issued the Respondent, acting as a sole Administrator, has not applied for the confirmation of the grant without reasonable cause. That the Respondent has failed to proceed diligently with the administration of the Estate of the Deceased and has wilfully and/or negligently subjected assets

forming part of the Estate of the deceased to loss and damage.

6. The application is supported by her affidavit sworn on 14<sup>th</sup> January 2015 in which she reiterates the grounds of the application. She goes on to depose that the Respondent has not shown any interest in the confirmation of the Grant nor completion of the administration of the Estate. That she has wilfully and/or negligently subjected assets forming part of the Estate of the deceased to loss and damage. The Applicant avers that she is apprehensive that the Respondent is distributing the Estate selectively and in a manner maliciously calculated to cause loss and damage to the members of her mother's house without first confirming the Grant of Letters of Administration Intestate.
7. The Applicant avers that the Respondent sold a parcel of land known as Plot No. 308/Ongata Rongai, without the confirmation of the Grant, and without seeking her consent as a beneficiary of the Estate written or otherwise. That the Respondent has been receiving and utilizing proceeds from some of the businesses forming part of the Estate, such as rental income from residential houses constructed on Plot No. 67, Masimba, Slaughter house at Masimba, Simba Rest House on Plot No. 61 Masimba and a Hotel situated on Plot No. 67 Masimba alone and without accounting for them.
8. The Applicant further avers that the Respondent together with one Alex Parsimei Kisoso, a brother to the Applicant, have subdivided various parcels of land amongst themselves and some beneficiaries, to the exclusion of other beneficiaries and herself. She contends that she is apprehensive that the Respondent is not concerned or interested in the distribution of the Estate and urged the court to make orders to protect the interests of the beneficiaries as the Respondent has shown incompetence with regard to execution and distribution of the Estate. She also prays that the court do compel the Administrator to reconstitute whatever assets that may have been misappropriated.
9. The application was opposed. The Respondent filed a replying affidavit sworn on 2<sup>nd</sup> July 2015 in which she deposed that there was an agreement dated 27<sup>th</sup> July, 2012, between the family members to sell a Plot No. 308 at Ongata Rongai Trading Centre, a family plot, which was not part of the deceased's properties registered under his name to enable them utilize the proceeds to pay off outstanding loans and retrieve the title deed that was withheld by the bank. The Respondent asserts that the family members have held meetings and discussions on the way forward, as she endeavoured to gather and secure the Estate's assets and they had reached an agreement on the mode of distribution of the deceased's Estate.
10. The Respondent further avers that she is extremely distressed by the application which makes false allegations against her as well as other beneficiaries and members of the deceased's family and seeks to undo or reverse all that the Respondent has done. The Respondent avers that she is in the process of instructing the Estate's Advocates on record to apply for the confirmation of Grant.
11. Miss Namisi Learned counsel for the Applicant filed written submissions and reiterated the conditions which may lead to revocation of a grant under the provisions of **Section 76 Law of Succession Act**. She also emphasised **Section 82(b)(ii)** which stipulates that despite the powers of the personal representative to sell or otherwise turn to account, all or any part of the assets vested in them, they are restricted from selling any immovable property before the confirmation of Grant. She referred the court to the decision in **Josephine Wambui Wachuka and 2 others vs Margaret Njoki Njoroge (2013) eKLR Nairobi, H.C. Succession Cause No. 1016 of 1993** and in **Re Estate of Hezekiah Mathara Gathende (Deceased) (2010) eKLR; Nairobi Succession No. 1018.2003**.
12. Miss Namisi argued that contrary to what is averred at paragraph 2 and 3 of the Replying Affidavit, the Respondent has not provided any proof of communication to those beneficiaries who were based abroad at the time of the intended sale of the plot in Ongata Rongai, neither has she furnished this court with evidence of their consent. Counsel contend further, that even with

the authority and consent of the beneficiaries, the Respondent had no power to sell any capital asset of the Estate since this is specifically prohibited by law. She urged that the Court itself does not enjoy such discretion, and the consent of the beneficiaries cannot override the provisions of the law. She referred this court to the decision of Dulu, J in **Re Estate of Hezekiah Mathara Gathende (deceased) (2012)**.

**“In my view the provisions of the law leave no room for the discretion of the Court. I have not been referred to any section of the law that gives the court discretion to allow sale of land assets before confirmation. I have also not been told that the Grant issued to Court ..... has been confirmed”.**

13. On the issue of confirmation of grant under section 71(1) of the Law of Succession act, Miss Namisi urged that the Letters of Administration were granted in April 2011, and four years later, they have not been confirmed. That the Respondent has not provided any reasonable justification or explanation for the delay in confirmation of the Grant since issues were ironed out in May 2013, but the application for confirmation of Grant has not been filed to date. It is her opinion that the Administrator/Respondent has failed in her duties prescribed under the Act, and it is in the interest of justice that the Grant be revoked and more able persons be appointed as Administrators of the Estate.
14. In reply Mr. Muthoga Gaturu for the Respondent submitted that the Respondent together with the other ten beneficiaries averred in their respective replies to the Applicant's application that they have all along been working very well together tracing, gathering and securing the Deceased's Estate's assets in readiness for applying for the Confirmation of the Grant. That the beneficiaries were indeed about to finalize the details of distribution so as to have the final application presented in court, when the Applicant who resides in Europe filed the present application before returning to Europe.
15. Mr. Muthoga further submitted that beneficiaries have already secured the Estate's title documents which had been charged to banks and pledged as securities for loans that had been advanced to the deceased, and that this was partly achieved by disposing of Plot No. 308 at Ongata Rongai which was actually not one of the deceased's Estate's properties or assets as alleged by the Applicant. That the beneficiaries had considered the obvious option of applying to court for an order to sell one of the deceased's Estate's assets for the purposes of meeting the urgent financial needs but instead they agreed to sell the asset which was not part of the deceased's Estate.
16. Learned counsel argued that after the death of their mother one of the Administrators, Lucy Waithira Kisoso, all the beneficiaries agreed that since there were no controversies or disagreements amongst the family members, they would continue to support the Respondent in gathering the Estate's assets. That the beneficiaries therefore saw no need to apply for the replacement of the late Lucy Waithira Kisoso as an Administratrix, and would all assist her to complete the remaining work.
17. The beneficiaries assert that there has been no delay in applying for the Confirmation of Grant, bearing in mind the work involved in tracing, securing and retrieving of the title documents of the Estate. That the application dated 14<sup>th</sup> January 2015 is based on allegations by only one beneficiary and is inaccurate, misleading and incorrect and if allowed would scuttle, distract and reverse all the positive gains and progress which has been attained by concerted efforts of all the other eleven family members.
18. Mr. Muthoga urged the court to dismiss the application, and allow the family to proceed with the final stage of applying for the Confirmation of the Grant issued herein through the present Administratrix, Priscilla Jeruto Kisoso, as requested by all the family members save for the Applicant.
19. From the grounds of the application, the averment in the affidavit in support and in reply, two

issues emerged for determination. The first issue is what the Applicant has termed the irregular sale of a parcel of land belonging to the Estate of the deceased, prior to the confirmation of the grant. The other issue is the alleged failure by the Administratrix to move diligently to administer and distribute the Estate. That this was done before confirmation of the grant and the Respondent did not seek leave of the court prior to the disposal of the parcel of land.

20. The undisputed facts of this cause are that the deceased Manasseh Masek Josiah Kisoso died intestate on 9<sup>th</sup> August 2009. He was survived by two widows and children as follows:

#### **First House**

1. Lucy Waithira Kisoso - widow
2. Alex Parsimei - son
3. Betty Sation - daughter
4. Edward Moosoi - son
5. Charles Sokoine - son
6. Samson Meleta - son

#### **Second House**

1. Priscila Jeruto Kisoso - widow
2. Caroline Rotich - daughter
3. Angela Sation - daughter
4. Douglas Parsanga - son
5. Christine Nashepae - daughter
6. Margaret Milanoi - daughter
7. Josiah Sirere - son

A grant of Letters of Administration was made to Priscilla Jeruto Kisoso and Lucy Waithira Kisoso. Lucy Waithira Kisoso, subsequently passed away on 5<sup>th</sup> July 2012.

21. From the replying affidavit the rest of the family members from the two houses have worked in tandem to trace, secure and retrieve title documents to the assets of the Estate to enable them carry out the distribution of the Estate. The Respondent avers that there have been family meetings held to discuss the mode of distribution, which has virtually been agreed upon. This is supported by the Minutes of the family meetings, the last of which was held in May 2013.

22. The court notes that all the beneficiaries have appended their signatures to the agreement annexed as “**PJK/2**” for the sale of plot No. 308/Ongata Rongai which was necessary to raise funds to repay the bank loans so that title documents to the assets of the Estate could be released, before the assets became available for distribution. Only two beneficiaries did not signify their consent by signing the agreement because they were out of the country at that time.

23. Of those two beneficiaries only the Applicant is aggrieved to date. The other beneficiary called Josiah Kisoso has since returned to the country and is in agreement with the rest of the beneficiaries. The court also notes that the Applicant has not offered any alternative as to how the title documents held in the bank as security for various loans advanced to the deceased before his demise were to be secured in order to facilitate distribution of the Estate. In any case there is no evidence that Plot 308/Ongata Rongai is part of the assets of the Estate.

24. On the issue of confirmation of grant, the circumstances that can lead to the revocation of grant have been set out in **Section 76 Law of Succession**. For a grant to be revoked either on the application of an interested party or on the court’s own motion there must be evidence that the proceedings to obtain the grant were defective in substance, or that the grant was obtained fraudulently by making of false statement, or by concealment of something material to the case, or that the grant was obtained by means of untrue allegations of facts essential in point of law.

25. A grant may also be revoked if the person named in the grant has failed to apply for confirmation or to proceed diligently with the administration of the Estate. See - **Matheka and anor v Matheka [2005] 1 KLR pg 456**. It may also be revoked if it can be shown to the Court that the person to whom the grant has been issued has failed to produce to the Court such inventory or account of administration as may be required.

26. In sum, the court finds that the application dated 15<sup>th</sup> January 2015 does not satisfy the requirements of **Section 76 Law of Succession Act** to warrant the revocation of the grant herein. It is the considered opinion of this court that to allow this application will not further the interests of this Estate and will instead scuttle and reverse the gains made by all the other beneficiaries who appear to have worked together very well with the common intention of settling this Estate with speed.

27. There being no minor beneficiaries in the Estate there is no legal requirement that there should be two administrators to the Estate. In any case all the beneficiaries except the Applicant seem to trust that the current administrator is equal to the task of distributing the Estate. The court also notes that the Administratrix has consulted and involved the beneficiaries in the process so far.

28. For the foregoing reasons the court finds that the application dated 15<sup>th</sup> January 2015 has no merit and is therefore dismissed. The Administrator on record is directed to move with due dispatch and obtain a date for confirmation of grant within the next 90 days of this date.

It is so ordered.

**SIGNED DATED and DELIVERED** in open court this **1<sup>st</sup> day of April 2016**.

.....

**L. A. ACHODE**

**JUDGE**