



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERUGOYA

SUCCESSION CAUSE NO. 475 OF 2013

(Formerly Succession Cause No. 30 of 1991 (Kerugoya))

IN THE MATTER OF THE ESTATE OF MACERA KANYI (DECEASED)

AND

LUKE MACHERA NJERU.....PETITIONER

VERSUS

SICILY WANJIRA IRERI.....1ST RESPONDENT

SAMUEL NDAMBIRI MACERA.....INTERESTED PARTY

RULING

1. This is a ruling in respect to a preliminary objection dated 25th June, 2015 raised by the Respondents in regard to Summons for Revocation of Grant dated 28th October, 2014. The basis of the objection is that the said application is defective and bad in law as the applicant sued the beneficiaries leaving out the administrator one Kanyir Macera who was issued with the grant on 10th November, 2005.
2. The respondents' counsels M/S Wangechi and Mr. Macharia contended that orders cannot issue against a party who has not been sued. They further submitted that **Section 79 and 82** of the **Law of Succession Act Cap. 160** places all responsibilities in relation to any grant issued to an administrator duly appointed by the law and that failing to sue the said personal representative is fatal to the application. In their view the application is incurably defective and directions that may be issued by this Court will not cure the defect.
3. Mr. Ng'ang'ah for the applicant opposed the preliminary objection contending that the same lacks in merit. In his view the law does not indicate that it is only the administrator who should be served with the summons for directions. He further contended that the issue of who should be served with the summons should be addressed when directions are taken pursuant to **Rule 44 (1)** of the **Probate and Administration Rules**. In his view the preliminary objection is a drastic measure which should not be used against his application. He opined that the summons is curable by an order to enjoin the administrator in this cause under **rule 44 (4)** of the **Probate and Administration Rules**.
4. I have considered the Preliminary Objection raised touching on points of law and the response by the applicant. **Section 79** of the **Law of Succession Act (Cap. 160)** provides an insight into the powers and duties of a personal representative or an administrator appointed in accordance with the law. The Section states:-

“The executor or administrator to whom representation has been granted shall be the personal representative of the deceased person for all purposes of that grant.....”

Under **Section 82** of the Act, the administrator is granted the following powers:

- a. ***“To enforce, by suit or otherwise all causes of action which by virtue of any law, survive the deceased or arise out of his death for his estate.***
 - b. ***To sell or otherwise turn to account so far as seems necessary or desirable in the execution of their duties, all or any part of the assets vested in them.....”***
5. The Summons for Revocation of Grant dated 28th October, 2014 herein faults the administrator for *inter alia* concealment, and fraud in petitioning for letters of administration. However for some reason the applicant who is duly represented by counsel chose not to name the administrator as the respondent or even direct his grievances to him. Directions are normally taken under **Rule 44 of Probate and Administration Rules** on the basis of the fact that there is proper application before court against the correct party or parties. The beneficiaries are not answerable in the administration of an estate of a deceased person in law. The only person accountable as per the cited section above is a person duly appointed and clothed with powers as provided above. Of course directions are usually taken in order to establish who else apart from the named administrator is likely to be affected by the summons for revocation depending on the extent to which an estate has been administered.

In the premises I find that the Preliminary Objection is well

taken. The Summons for Revocation of Grant dated 28th October, 2014 is defective both in form and substance. It does not comply with **Rule 59 (5)** of the **Probation and Administration Rules** and is not clearly directed to the administrator who is responsible and accountable in the administration of the estate of MACERA KANYI (Deceased). The application is struck out but I shall not make any order as to costs at this state.

Dated and delivered at Kerugoya this 6th day of June, 2016.

R. K. LIMO

JUDGE

6.6.2016

Before Hon. Justice R. Limo J.,

Court Assistant Willy Mwangi

Igati Mwai holding brief for Ngangah for Applicant

Petitioner and Respondent present in court

Githinji K. holding brief for Maina for Interested Party

Wangechi for Respondent absent

COURT: Ruling dated, signed and delivered in the open court in the presence of Igati Mwai holding brief for Ng’ang’ah for Applicant and K. Githinji holding brief for Maina Kagio for Interested Party and in the absence of Wangechi for Respondent. The Petitioner and both Respondents are also present.

R. K. LIMO

JUDGE

6.6.2016