



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT CHUKA

MISC. SUCCESSION CAUSE NO. 5 OF 2015

(FORMERLY NKUBU PM'S COURT SUCCESSION CAUSE NO. 11 OF 2013)

**IN THE MATTER OF THE ESTATE OF THE LATE JOHN KIBAARA MURAUKO
(DECEASED)**

T M K.....PETITIONER

- VERSUS -

C K M.....INTERESTED PARTY/APPLICANT

W K.....INTERESTED PARTY/APPLICANT

R U L I N G

1. John K M died on 5th December, 2010 at [particulars withheld] Sublocation. He was survived by the following:

- a) C K M - Widow
- b) H M K - Daughter
- c) M G K - Daughter
- d) E M K - Daughter
- e) T M K - Father
- f) F N M - Mother

2. On 21st February, 2013, T M K, the father of the deceased (hereinafter "*the Petitioner*") petitioned for Letters of Administration Intestate for the estate of the deceased. In Form No. P&A 5 the Petitioner listed the persons set out in the paragraph 1 above as those surviving the deceased. On the assets section of the form, he disclosed that the estate had nil assets but had several liabilities which he set out as follows:-

3. Pursuant thereto, the grant was issued to the Petitioner on 23rd July, 2013 and confirmed on 21st May 2014. According to the Certificate of confirmation dated 4th June, 2014, the estate was distributed as follows:-

SCHEDULE

“That the proceeds from the proceeds from;

1. TSC Gratuity

2. Barclays Bank [particulars withheld] (Meru Branch)

3. Mwalimu Sacco Shares

4. British American Shares to be used for the maintenance and upkeep of the following:-

a) H M K

b) M G K

c) E M K”

4. On 17th September, 2015, C K M and W K (*“the Applicants”*) applied for the revocation of the said grant and for other orders. They also sought to be appointed as joint administrators of the estate of the deceased. They contended that; there was concealment of material facts in obtaining the grant; that the Petitioner obtained the grant as the sole administrator contrary to section 58 of the Law of Succession Act (hereinafter *“the Act”*) as there were minor beneficiaries of the estate. In her Supporting Affidavit, C K M (*“the 1st Applicant”*) stated that she is the widow of the deceased, that the three children of the deceased were aged 10, 8 and 6 years respectively. That she was not informed of the lodging of the subject cause. That the estate of the deceased was valued in excess of Kshs.100,000/-.

5. In his Replying Affidavit which he swore on 5th April 2016, the Petitioner deponed that the deceased was his son; that after the demise of the deceased, the 1st Applicant deserted the matrimonial home to an unknown place until 2013; that they had opened a joint account at [particulars withheld] in which he and the 1st Applicant were signatories. He further deponed that he did not have any adverse interest against the children of the deceased. That in any event, the entire estate had been distributed for the benefit of the children of the deceased. That he was 75 years old and had diligently administered the estate. He urged the court to dismiss the application with costs.

6. In a rejoinder, the 1st Applicant filed a Supplementary Affidavit on 9th May, 2016. In it, she contended that the Petitioner had not addressed the pertinent issues regarding the illegalities committed in obtaining the grant which had been raised in the application; that the Petitioner had all along refused to co-operate in providing for the children of the deceased. That she was in custody of the children of the deceased whom the Petitioner could not see eye to eye. That it is the Petitioner who drove the 1st Applicant and her children from their rural home.

7. Directions were made that the parties file submissions. While the Applicants Advocates filed theirs on the 4th October, 2016, the Petitioner's Advocates filed none. It was submitted for the Applicants that the Principal Magistrate's Court at Nkubu had no pecuniary jurisdiction to deal with the estate of the deceased. That the Petitioner had filed and prosecuted the Succession Cause secretly. That the Applicants are widow and brother -in-law respectively of the deceased; that they are therefore fit to be appointed as administrator of the estate. Finally that at his age, the Petitioner was too old to be the administrator.

8. I have considered the Affidavits and the submissions on record. The issues that arise for determination are; should the grant be revoked? If so, who should be the administrator of the estate of the deceased? What orders should be made on the administration of the estate of the deceased?

9. On the first issue, Section 76 of the Act Provides; inter alia, that:-

“76. 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 or 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 of inadvertently."

10. In the present case, the Applicants alleged that the Succession Cause was commenced, lodged and prosecuted secretly without involving the 1st Applicant who is the widow of the deceased. Undisputably, the 1st Applicant as the widow of the deceased had priority in applying for the grant but no consent was sought or obtained from her (see section 39 of the Act). It was also alleged that the Petitioner failed to disclose that there were minors involved in this estate. Birth Certificates for the children were produced which showed that they were born on 26th September, 2005, 24th April, 2007 and 23rd November, 2009, respectively which is clear that they are still minors. Section 58 of the Act demands that where there is a continuing trust such as where there are minors, no grant shall be issued to one administrator alone. By failing to disclose that there were minors involved in this estate, the Petitioner succeeded in being appointed alone as administrator. All these allegations were not denied nor challenged indeed they turned out to be true.

11. In this regard, this court is satisfied that the grant was obtained fraudulently by making a false statement of fact, that the Petitioner concealed facts material to the just determination of the Cause, that there were untrue allegations of essential facts and that the consent of the widow was never sought. Indeed the proceedings to obtain the grant were defective in substance. This court is therefore satisfied that the grant cannot stand and the same is subject to revocation and it is hereby revoked.

12. This court is alive to the Petitioner's response that the 1st Applicant disappeared after the demise of the deceased and only emerged in 2013. He also contended that he had involved the 1st Applicant in the administration of the estate in that they were both signatories in some joint account held at [particulars withheld] and he produced a letter from the Sacco dated 11th January, 2016 to prove his contention. On the alleged disappearance of the 1st Applicant, the Petitioner did not give an answer to the 1st Applicant's allegation that it is he, the Petitioner, who chased her away from the rural home on the false allegation that she had something to do with the demise of the deceased. Her allegation therefore remained unchallenged. As regards the allegation that the 1st Applicant was a joint holder of the subject account at [particulars withheld] Ltd, the letter exhibited does not confirm that allegation. The exhibit marked "TMK1" is a letter dated 11th January, 2016 by [particulars withheld] to the Assistant Public Trustee, Embu confirming that the families of the deceased held an account with the said Sacco and the signatories were the Petitioner, the 1st Applicant and one M M M, a brother to the deceased. Nowhere is there any mention that the said account could not be operated without the presence, involvement and/or consent of the widow.

13. In any event, this court expected the Petitioner in the very least, as a sign of good faith to have given a detailed account on how he had administered the estate by giving full details of all the monies he had received or collected on behalf of the estate, those monies he had expended and how the same was expended. He should have also given full details of how and where he had invested the balances. To the contrary, he kept silent on all these. To this court, that was not a conduct of a person acting in good faith. It is in mind that he is just but a trustee.

14. The next issue is who is to be appointed administrator. The Petitioner swore that he is a respectable 75 years old man who was concerned with the affairs and interests of the children of the deceased who are his grandchildren. On the other hand, the Applicants deposed that the Petitioner was not concerned with the affairs of the said children; that the children were in the custody of the 1st Applicant and that the Petitioner had in most cases failed to pay their school fees. These allegations by the Applicant were not

sufficiently answered by the Petitioner. The Applicants stated that as the widow and paternal uncle of the children, they were better placed to be appointed the administrators of the estate of the deceased. This court is satisfied that since the 1st Applicant is the mother of the subject minors; that they have been in her custody from the demise of the deceased and continue to be so and that the 2nd Applicant has no adverse interest to the said minors, the Applicants are the persons who are fit to be appointed the joint administrators of the estate of the deceased.

15. On the final issue as to what orders are to be made on the administration of the estate of the deceased, this court notes that the trial court fell into a serious error in confirming the grant without establishing what actually constituted the estate of the deceased. From the record of the lower court, it is not clear whether that court established the following:-

- a) The amount that constituted the TSC Gratuity.
- b) The balance on [particulars withheld] (Meru Branch).
- c) The value of Mwalimu Sacco Shares.
- d) The CDS Account and the number of the British American Shares.

16. In view of the foregoing, before this court can make any order for payment of any monies from the estate, it is imperative to ascertain the amount due to the estate and available for the minors. The court is alive to the fact that the said minors must go back to school in January 2017. In this regard, compliance with the directions to be made should be before the schools open.

17. The court makes the following orders under Article 159 (2) of the Constitution and in the interests of justice:-

- (a) the grant issued to T M K on 9th October, 2013 and confirmed on 21st May, 2014 is hereby revoked and all subsequent orders based thereon set aside;
- (b) a fresh grant of Letters of Administration Intestate for the Estate of the late J K M is hereby issued to C K M and W K as joint administrators;
- (c) a permanent injunction is hereby issued restraining T M K from accessing any of the deceased's benefits/payments from the deceased's employer, the Teacher's Service Commission, Barclays Bank A/C No.013-4788358 (Meru Branch), Mwalimu Sacco and Britam Insurance Company including the monies at the [particulars withheld]
- (d) the following individuals and entities are directed to forthwith supply details and disclose to C K M and W K, the Administrators of the Estate of the deceased;
 - i. Assistant Trustee, Embu, the amount of gratuity held on behalf of the deceased.
 - ii. Barclays Bank of Kenya Ltd-Meru Branch - A detailed statement of [particulars withheld] for the period 5th December, 2010 to date.
 - iii. Mwalimu Sacco the amount of shares due to the deceased.
 - iv. Trans Nation Sacco Ltd- A full statement of Account [particulars withheld] from inception to date.
- (e) T M K is to file in court within 60 days a full statement of Account of his administration of estate for the period 21st May, 2013 to date.
- (f) The new Administrators do file a full report in Court on the estate of the deceased within 60

days.

(g) Both the Administrators and T M K do appear in court on 11th January, 2017 for confirmation and further directions.

(h) There is liberty to apply.

18. This being a family matter, this court makes no order as to costs.

It is so decreed.

DATED and Delivered at Chuka this 3rd November, 2016.

A.MABEYA

JUDGE

Ruling read and delivered in court in presence of the parties.

A.MABEYA

JUDGE

3/11/2016