



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

FAMILY DIVISION

SUCCESSION CAUSE NO. 2761 OF 2007

IN THE MATTER OF THE ESTATE OF DANIEL KAMAU MWANGI (DECEASED)

ELIZABETH WANJIRU KAMAU.....APPLICANT

VERSUS

LUCY WANJIKU..... RESPONDENT

JUDGMENT

1. The deceased DANIEL KAMAU MWANGI died intestate on 11th July 2003. On 17th October 2007 the respondent LUCY WANJIKU and ALEX KIARIE KAMAU, widow and son of the deceased, respectively, petitioned the Court for the grant of letters of administration intestate. In the affidavit sworn in support of the petition, it was deponed that the deceased had died leaving the respondent as the only widow and that they had five children. These were ALEX KIARIE KAMAU, ESTHER WAITHERA KAMAU, NAOMI WANJIRU KAMAU, JACINTA NDUTA KAMAU and CAROLINE NJERI KAMAU. On 8th February 2008 the grant was issued. The grant was confirmed on 16th February 2009 and certificate issued on 16th February 2009 distributing the estate to the respondent and her children.
2. On 6th April 2011 the applicant ELIZABETH WANJIRU KAMAU filed the present application seeking the revocation of the grant. She asked that a fresh grant be issued in their joint names and that the shared property reverts back to the estate to await fresh sharing. Her case was that the deceased had left two widows: the respondent (1st wife) and herself (2nd wife). She stated that she got five children (WAITHIRA KAMAU, KIMANI KAMAU, MAINA KAMAU, MUIRURI KAMAU and MWANGI KAMAU). Her complaint was that both her and her children had not been involved in the petition leading to the grant, and the fact that the deceased had another family had not been disclosed to the court. The consequence was that her family had not been provided for in the distribution of the estate of the deceased, yet they were beneficiaries entitled to inherit.
3. The respondent opposed the application. Her contention was that she had sought letters without involving the applicant due to her non-cooperation. Otherwise, it was not her intention to

disinherit the applicant and her children. She stated that she was not opposed to the sharing the estate, the only condition being that the applicant gets the deceased's property that was acquired after 1992.

4. The applicant was represented by ALICE KAMAU & CO. ADVOCATES and the respondent by KIRUNDI & CO. ADVOCATES. Each side filed written submissions. I have duly considered them.
5. Under **section 52 of the Law of Succession Act (Cap. 160)** as read with **rule 7(1)(e) of the Probate and Administration Rules**, an application for a grant of letters of administration should contain, *inter alia*, the names and addresses of all the surviving spouses, children, parents, brothers and sisters of the deceased, and of the children of any child of his or hers then deceased. There is no dispute that the deceased left two widows, each with children. The respondent did not in her petition disclose the existence of the applicant and her children. She concealed from the court information that was material to the case (**section 76(b)**).
6. Secondly, under **rule 26(1) of the Probate and Administration Rules**:

“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.”

Further, **rule 40(8)** requires that consent of all dependants or other persons who may be beneficially entitled to the estate be availed in the application or grant. The applicant was under **section 66** of the Act equally entitled to petition for grant. She was, along with her children, entitled to information regarding the filing of the petition. She was entitled to notice at every stage leading to the confirmation of the grant. A grant will be revoked where a person who is entitled to apply is not notified by the petitioner of his intention to apply and that person's consent to the petitioner's application is not sought. **(IN THE MATTER OF THE ESTATE OF NGAII GATUMBI alias JAMES NGAII GATUMBI, NRB H.C. SUCCESSION CASE NO. 783 OF 1993).**

7. The respondent contended in her submission that the grant should not be revoked because the application had been brought two years following the confirmation. **Section 74** states that a grant of representation whether or not confirmed, may at any time be revoked or annulled if the Court decides. The **Act** does not give a time limit. Whereas it is true that an application for revocation and/or annulment should be brought within a reasonable time, which depends on when the applicant became aware of the facts, among other factors, the court should always endeavour to do substantial justice to any such case. In the case of **PATRICK NG'OLUA M. MUNGANI V. FREDRICK KIMATHI NG'OLUA AND OTHERS [2013]eKLR**

“...the fact that there may have been delay in filing this application for revocation of grant cannot be a good ground to deny the applicants justice...”

8. In conclusion, I revoke the grant that was issued to the respondent and ALEX KIARIE KAMAU on 8th February 2008 and confirmed on 16th February 2009. The distribution that followed the confirmation is recalled and any new titles cancelled. The entire estate shall revert to the name of the deceased.
9. It is hereby directed that a fresh grant of letters of administration intestate does issue in the joint names of the respondent and applicant. They will be at liberty to apply for the confirmation of the grant within 60 days.

DATED and DELIVERED at NAIROBI this 3rd day of March 2015

A.O. MUCHELULE

JUDGE