



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KITALE
P & A CAUSE NO. 121 OF 2004
YWALANGOLE NGOLETUKEI.....DECEASED
VERSUS
MARY KATUL ZALENDA.....PETITIONER
RULING

1. The application dated 1st November, 2011, is made under section 66 of the Law of Succession Act and Rule 73 of the Probate & Administration Rules.

Under section 66, the court shall, save as otherwise expressly provided, have a final discretion as to the person or persons to whom a grant of letters of administration shall, in the best interest of all concerned, be made and under Rule 73, the court is given inherent power to make such orders as may be necessary for the ends of justice or to prevent abuse of the court process.

2. This application seeks orders to have grant of letters of administration issued to the applicant, **Mary Katul Talenda** and the respondent, **Lucy Cherop Likotum**, apparently in their capacity as the surviving daughters of the deceased, **Ywalangole Ngoletukei**. The reasons for the application are that the grants of letters of administration previously issued to the applicant was annulled by the court but the respondent has since then never taken any step to apply for fresh letters of administration resulting in the estate of the deceased remaining unadministered.

3. In the supporting affidavit dated 1st November, 2011, the applicant avers that the deceased died on 28th December, 1982 and on 26th April, 2006, the respondent applied for revocation of the grant which was issued to the applicant and confirmed on 1st December, 2005. the application was allowed but the respondent never took any step to apply for issuance of grant in her name thereby necessitating the present application which is opposed by the respondent on the basis of the grounds of opposition dated 19th March, 2012 and the facts deponed in the replying affidavit dated 17th February, 2015.

4. Having considered the application in the light of the supporting grounds and those in opposition and also in the light of the oral submissions by counsels representing the applicant and the respondent, the opinion of this court is that the initial grant of letters of administration issued to the applicant having been revoked by the court in its ruling of the 18th October, 2007, the “*status quo*” that existed in relation to the estate of the deceased prior to the issuance of the grant was restored meaning that the parties had to go back to the drawing board and make fresh application for issuance of grant. They were required to re-start the normal process of acquiring grant by petitioning for the same since the court upon revoking the initial grant did not pursuant to section 66 of the Succession Act give directions with regard to who between the applicant or the respondent should be issued with a new and fresh grant of letters of

administration.

5. This application was therefore unnecessary as the applicant had the liberty to re-apply for the grant and let the respondent join her in the same or raise an objection to the application if she felt that the applicant was a stranger and not a beneficiary of the estate of the deceased.

Alternatively, the respondent could also apply for the grant in the normal manner and let the applicant join her in the same or raise an objection if she felt that the respondent was out to disinherit her from the estate of their father.

6. The effect of the ruling made by the court on the 18th October, 2007, was to revoke and render null and void the grant of letters of administration issued to the applicant on 5th October, 2004 and confirmed on 1st December, 2005.

With the revocation of the grant, the certificate of confirmation of grant was also revoked as it had no foundation to stand on.

The ultimate effect of the revocation was to put this file to a close and allow either party or both to make fresh application for grant of letters of administration by following the prescribed procedure.

This application may therefore be constituted to be a short cut of obtaining fresh grant of letters of administration without following the prescribed procedure.

7. Interestingly, the application was converted into a forum of establishing the parties alleged relationship or non-relationship between themselves and/or between each one of them and the deceased. Paternity and ownership of the estate property became issues in this application yet that should not have been the case considering that what was being sought was issuance of a grant of letters of administration in the joint names of the applicant and the respondent.

Suffice for this court to hold that the application is indeed an abuse of the court process and must and is hereby dismissed with costs to the respondent.

Litigation under this cause and file is thus put to an end.

Ordered accordingly.

[Read and signed this 4th day of March, 2015.]

[In the presence of M/s. Bett for Mr. Barongo for applicant and Mr. Chebii for respondent.]

J.R. KARANJA.

JUDGE.