



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
SUCCESSION CAUSE NO. 140 OF 2014

IN THE MATTER OF THE ESTATE OF KABIRU KABUNGU (DECEASED)

GRACE WANJIKU NDURU.....OBJECTOR/APPLICANT

VERSUS

PETER KABIARU KABUNGU.....1ST RESPONDENT

SIMON KAMAU KABIARU.....2ND RESPONDENT

AGNES WANJIRU KABIARU.....3RD RESPONDENT

RULING

Before this court, is an application filed by the applicant for revocation/annulment of the grant of letters of administration brought under **Section 76 of the Law of Succession Act Cap 160**. The respondents in this matter petitioned for the grant of letters of administration in Kiambu Chief Magistrate's Court Succession Cause No. 245 of 2013 and the same was issued on 10th January, 2014. The other beneficiaries of the estate filed affidavits consenting to the application appointing the respondents as administrators of the estate of the deceased. Upon gazette of the application, no objection was raised. The court issued a grant of the letters of administration after the lapse of 30 days after advertisement pending confirmation. When the applicant saw the temporary grant of the letters of administration in the Kenya gazette on 18th November 2013, she filed an application contesting the same.

PLEADINGS

During the oral submissions, the applicant through Counsel Mr. Waweru stated that she wished to rely on her affidavit filed on 24th January, 2014 supporting the application.

- 1) The applicant stated that she is a daughter and the eldest child of the deceased.
- 2) The respondents did not seek her consent when they applied for the grant of letters of administration and they forged her signature to fraudulently acquire the grant.
- 3) The applicant further stated that the three children of the sister (now deceased) were not included by the respondents when they made the application, though the application indicates that one of the daughters consented.
- 4) The applicant states that the 1st respondent was adjudged bankrupt vide Bankruptcy Cause No. BC 57 of 2008 and therefore lacked the capacity to act as the administrator.

- 5) Five prime properties that form part of the estate were not included in the application.
- 6) The properties are currently in their possession and utilized by the respondents. These properties include;
 - a) KABETE/KIBICHIKO/605 measuring 3 acres
 - b) KABETE/NYATHUNA/735 measuring 5 acres
 - c) NAIROBI/EASTLEIGH plot no. 36/VII/596
 - d) Plot no. 14 Ruku shopping centre
 - e) Plot no. T227- GIKUNI shopping centre
 - f) KABETE/NYATHUNA 739 measuring 6 acres

The Respondents were served with the application to appear in Court on 22nd September, 2014. They did not appear in Court. On 20th April, 2015 they were served and they did not appear in Court. The matter proceeded ex parte.

ANALYSIS

The court has evaluated the documents on record and they prove that the respondents were served by a duly registered process server on the 1st February 2014. The respondents did not file any replying affidavit to the application nor did they give any sufficient reasons for not doing so. The respondents were again served with mention notices on 10th of April 2015 by another registered process server, who acknowledged receipt of their copies in his affidavit of service. The respondents did not attend court on the date stated in the notice. Failure to file the replying affidavit meant that the respondents had concurred with whatever was stated in the application and its supporting affidavit. **In the Matter of the Estate of TNA (Deceased) Succession Cause No. 19 of 2000, Masinga J** stated that;

“...in absence of a replying affidavit and submissions on the part of the respondents, the applicant’s application stands unopposed. I have therefore no reason to doubt the contents of the applicant’s affidavit in support of her application...”

This court has no reason to reject the application since there was no ground of opposition from the respondents or submissions to prove the contrary. The Applicant’s application remains unopposed and uncontroverted.

FINAL ORDERS

- 1) The Court hereby rules in favour of the applicant and revokes the grant of letters of administration that were granted by the Magistrates Court in Kiambu Succession Cause No. 245 of 2013.
- 2) A new grant will be issued in the name of the Applicant Grace Wanjiku Nduru and Simon Kamau Kabiaru.
- 3) The parties to file the proposed mode of distribution within 90 days from today.
- 4) Any of the aggrieved parties to file their objection and proposal within 90 days for the Court to consider/determine.
- 5) No orders to costs.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 8TH DAY OFMAY, 2015

M. MUIGAI

JUDGE

In the presence of:

Counsel for the Applicant.....

Counsel for the Respondent.....