



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT EMBU

SUCCESSION CAUSE NO. 121 OF 2009

(In the matter of the estate of JOYCE KANJIRU NJIRU- Deceased)

NICHOLAS IRERIAPPLICANT

VERSUS

ROSE NJERI AYANGA.....PETITIONER/RESPONDENT

R U L I N G

The deceased Joyce Kanjiru Njiru died intestate on the 16/2/2001 at Kirinyaga District. The petitioner/respondent filed this succession cause on 26/2/2009 and was issued with letters of administration intestate on 4/6/2009. The record shows that the deceased was survived by Rose Njeri Ayanga the respondent, Nicholas Ileri Mbarire, Lucy Gatune Njiru, Catherine Gichuku Mbarire and John Miriti Mbarire.

The respondent filed summons for confirmation of grant on 10/5/2013 in which she included the list of distribution of the estate.

On the 13th of May 2010, one Lucy Gatune Njiru filed a protest against the confirmed grant alleging that one of the beneficiaries John Miriti had illegally sub-divided land parcel No. 2787/395 Nanyuki Municipality in to 4 portions and has purportedly curved out for himself a large portion which touches the road. It was further alleged that the said beneficiary was colluding with the administrator with the intention of denying one Nicholas Ileri of his inheritance.

On the 6/8/2012 the applicant filed summons for revocation of grant relying on the following grounds:-

1. *That the administrator has failed after due notice and without reasonable cause to apply for the confirmation of the grant within one year.*
2. *That the administrator has persistently concealed from the court some beneficiaries of the estate.*
3. *That she has since the year 2000 put to her own use the rental income belonging to her sister's house.*

In the replying affidavit the respondent admitted that she was issued with letters of administration intestate on the 22/5/2009 which grant has not been confirmed. She states that all the beneficiaries in the estate were disclosed in this succession cause and that the applicant consented to her appointment as the administrator. The only disagreement between her and the applicant is on distribution of the estate. She said that the house in Nanyuki belongs to her late sister Mercy Thaara who died and was survived by a daughter Mercy Debenham who is the rightful heir of the property. Provision for the said Mercy has been made in the application for confirmation of grant. The house in Nanyuki is situated in the rural area and has been vacant for some time.

The parties filed submissions in support of their arguments. The applicant stated that the respondent has not given a

good reason as to why she failed to apply for confirmation within one year upon being issued with letters of administration intestate. She has left out her late sister's daughter and her late brother's son who are also beneficiaries in the deceased's estate. The respondent failed to disclose that there was money in the deceased's Barclays and Standard Chartered Bank accounts. She has put into her personal use the rental collected from her late sister's house in Nanyuki. In view of her non-disclosure, the grant should be revoked under Section 76 of the Law of Succession Act.

The respondent in her submissions stated she was appointed administrator on 4/6/2009 and has since then faithfully administered the estate of the deceased. However, the applicant and one Lucy Gatune have been unco-operative while the rest of the beneficiaries have no problem. It is due to the said differences that the confirmation of grant has delayed.

On the allegation that the administrator has concealed the beneficiaries, it is evident that all the beneficiaries have been named in Form P&A 5. In regard to the rental income, the respondent has failed to give an account of the money collected from the house since the death of the deceased up to the time this application was filed. It is not in dispute that the said house has been occupied before it fell vacant.

The grounds for revoking a grant are set out in Section 76 of the Act which provides that a grant may be revoked for the following reasons:-

- (a) *the proceedings to obtain the grant were defective in substance;*
- (b) *the grant was obtained fraudulently by the making of a false statement or by the concealment from the court of 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 or inadvertently;*
- (d) *to proceed diligently without that person to whom the grant was made, has failed after undue notice and without any reasonable cause to either apply for confirmation of the grant within one year from the date thereof, or such longer period as the court has ordered or allowed; or the administration of the estate; or to produce to the court, within the time prescribed, any such inventory or account of administration as is required by the provisions of paragraphs(e) and (g) of section 83 or has produced any such inventory or account which is false in any material particular; or*
- (e) *that the grant has become useless and inoperative through subsequent circumstances.*

The provisions of Section 76 are clear that a grant may be revoked for failure of the administrator to apply for confirmation of grant within one year from date of issue of the grant of letters of administration. The letters of administration were issued on 22/5/2009 which is about 3 years ago. The respondent has not explained the delay to apply for confirmation the grant to the satisfaction of the court. The respondent claimed that most of the beneficiaries were co-operative except the applicant. However, she did not avail an affidavit from any of the beneficiaries to support her claim.

In her affidavit in support of the petition for letters of administration intestate sworn on 26/3/2008, the administrator has listed the following beneficiaries.

- (i) Rose Njeri Ayanga
- (ii) Nicholas Ileri Mbarire
- (iii) Lucy Gatune Njiru
- (iv) John Miriti Mbarire
- (v) Catherine Gichuku Mbarire

It is not in dispute that the daughter of Mercy Thaara has not been included in the list of survivor of the deceased. It was important to include the name of Mercy Debenham so that she could inherit the share of her deceased mother. The non-disclosure of this beneficiary amounts to a good ground for revocation of grant.

In the case of ***COSIMO POLLICINO VS TONEY KENT [2014] eKLR*** the court of appeal held that non-disclosure of a material fact is sufficient to set aside a grant under Section 76 of the Act.

In view of the foregoing, I find the summons for revocation of grant merited and is hereby allowed as prayed. The grant issued to the respondent on 22/5/2009 is hereby revoked and a fresh grant to issue in the joint names of Rose Njeri Ayanga and Nicholas Ileri Mbarire. Any of the administrators is at liberty to file summons for confirmation of grant within 30 days from the date of this ruling.

It is hereby so ordered.

DELIVERED, DATED AND SIGNED AT EMBU THIS 6TH DAY OF MAY, 2015.

F. MUCHEMI

JUDGE

In the presence of:-

Applicant present

John Miriti - Beneficiary