



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

PROBATE AND ADMINISTRATION DIVISION

MISC. APPLICATION NO. 182 OF 2014

IN THE MATTER OF THE ESTATE OF GEORGE KIBOCHA WANGUKU (DECEASED)

ANGELA WANJIKU KIBOCHA.....OBJECTOR/APPLICANT

-VERSUS-

VINCENT G. KIBOCHA.....ADMINISTRATOR/RESPONDENT

R U L I N G

1. The application before me is the one dated 27th October 2014 and filed in court on 3rd November 2014 by the Objector/Applicant, Angela Wanjiku Kibocha (hereinafter Applicant). It is said to be brought under “**Section and Rule 44 and Rule 73** of the **Probate and Administration Rules.**” In it the Applicant seeks orders of court that:

1. the grant of Letters of Administration intestate issued to Vincent G. Kibocha (hereinafter Respondent) in the Senior Principal Magistrate’s Court Cause No. 21 of 2008 at Kikuyu on 27th October 2009 and confirmed on 10th September 2010 be annulled and/or revoked.

2. Stephen Gitau Kibocha, James Karanja Kibocha and Angela Wanjiku Kibocha be appointed Administrators of the Estate of the late George Kibocha Wanguku (deceased).

3. The Grant of Letters of Administration once made be confirmed as follows:

Beneficiary	Share
1. Mary Muthoni Wainaina	0.40 Ha
2. Angela Wanjiku Kibocha	0.40 Ha
3. James Karanja Kibocha	0.40 Ha
4. Mary Wahito Nyoike	0.40 Ha
5. Vincent G. Kibocha	0.40 Ha

6. Steven Gitau Kibocha 0.40 Ha

7. Daniel Kariuki Kibocha 0.40 Ha

She also prays that costs be provided for.

2. The grounds of the application as may be seen on the face thereof are that, the Grant of Letters of Administration was obtained and confirmed by a court that had no jurisdiction to do so in Cause No. 21 of 2008 at Kikuyu Law Courts. That the said Cause was dismissed in its entirety and proceedings therein declared null and void by E. Micheka Ag. Principal Magistrate on 4th March 2014 after the court held that it lacked jurisdiction. That the beneficiaries had agreed on the mode of distribution and each party is already in possession of their parcel of land. That it is only the registration of the mutation that is pending at the Land registry and the Respondent was unable to fully and diligently administer the Estate, because he had already sold a major portion of his share of the land.

3. In the supporting affidavit sworn by the Applicant on 27th October 2014 she deponed that she is acting on behalf of the other beneficiaries and on her own behalf. She also deponed that the deceased George Kibocha Wanguku died on 3rd September 1991 and a Grant of Letters of Administration and Certificate of confirmation were issued on 27th October 2009 and 10th September 2010 respectively, vide Kikuyu Principal Magistrate's Court Succession Cause No. 21 of 2008. She set out a list of the beneficiaries who survived the deceased.

4. The Applicant deponed further that Henry Wanguku Kibocha, David Nyoike Kibocha and Edwin Mugo Kibocha (Applicant's father) were all survived by beneficiaries. That the beneficiaries and dependants of the deceased agreed that the deceased's asset being L.R. No. Karai/Gikambura/547 measuring 1.132 Ha. be shared and distributed as per the schedule above.

5. The Applicant also stated that Eliud Kinuthia Kamau bought 0.25 hectares from the share belonging to Vincent G. Kibocha while Margaret Wanjiku Nyabuto bought 0.20 hectares from the late Henry Wanguku and this was reflected in the mode of distribution. That upon her father's death, she was appointed the Administrator of his Estate on 23rd October 2013 vide High Court Succession Cause No. 1817 of 2013.

6. According to the mutation, the property was distributed among all the children and beneficiaries of the deceased and the purchasers. The Applicant argued that the Respondent has continued to hold himself out as the administrator of the Estate and purported to continue with the process of distribution without any legal basis or authority of the court.

7. The Respondent filed a replying affidavit dated 17th March 2015, and deponed that the Applicant is a grandchild of the deceased and she had no connection with the deceased for the better part of her life, since her mother had divorced her father in the early 1980's. He does not dispute that he was appointed as the administrator in Kikuyu SPM's Cause No. 21 of 2008, and that a grant of Letters of Administration and Certificate of Confirmation were issued to him. He confirms further that the said Grant and Certificate of confirmation were later annulled by the Court at Kikuyu for lack of jurisdiction.

8. The Respondent avers that it was by reason of an application by a creditor, one Stephen Macharia Wangare claiming an interest as a purchaser from his father that the Principal Magistrate's Court, Kikuyu was seized of the fact that the value of the Estate exceeded its pecuniary jurisdiction. That the Applicant did not disclose that the said creditor too claimed an interest as purchaser from her own father. He denies the fact that he carries himself as the Administrator of the deceased's Estate and claims that the Applicant has not followed the normal procedures for petitioning for Letters of Administration of the Estate. The Respondent asserts that he and his siblings are able, ready and willing to apply afresh for letters of administration for the deceased's Estate and none of them has renounced this right.

9. Learned counsel, Mr. Achila submitted for the Applicant that the Respondent continues to hold

himself as the Administrator of the Estate and even swore an affidavit of protest in Succ. No. 1817 of 2013 in the Estate of Edwin Mugo Kibocha, describing himself as the Administrator of the Estate of George Kibocha long after the ruling in the SPM's Court at Kikuyu. That Stephen Macharia Wangare who claims to be a creditor in the deceased's estate is a stranger to the proceedings. That the Respondent has failed to diligently carry out his mandate and the beneficiaries have not been able to obtain titles for their property.

10. Mr. Achila further submitted that there is no dispute on the mode of distribution and the beneficiaries are already in occupation of their respective portions. Further that there is no objection by the Respondent, to the schedule on the mode of distribution filed with the application being allowed. He argued that the beneficiaries are entitled to enjoy full benefits that go with the certificate of Title Deed to their property and ought not to be delayed any further. He urged the court to consider the application without due regard to procedural technicalities and quoted **Rule 73** of the **Probate and Administration Rules** upon which their application is premised and which provides that:

“Nothing in these rules shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.”

That the above rule should be invoked.

11. I have considered the application before me, the reply thereto together with the rival submissions and find that it is not tenable for two main reasons. The prayer for annulment and/or revocation of the grant issued on 27th October 2009 and confirmed on 10th September 2010 in Succession Cause no. 21 of 2008 at Kikuyu Senior Principal Magistrate's Court, is not capable of being granted because the said grant no longer in existence. The ruling of 4th March 2014 by Ag. Principal Magistrate Mr. Michieka in the said Succession cause stated thus:

“The upshot is that I am inclined to declare these proceedings null and void to the extent that they have been filed in a court that lacks jurisdiction and dismiss the cause in its entirety....”

12. From the foregoing, the entire proceedings in Succession Cause No. 21 of 2008 were found to be null and void and the entire cause was dismissed. There is therefore no grant before this court, confirmed or otherwise, that is capable of being annulled or revoked.

13. The second prayer fails for the same reason stated above. The cause having been dismissed in its entirety, there is no petition before this court, upon which the court can appoint the three persons set out in the second prayer, as administrators of the estate of the deceased. Lastly, it follows therefore, that there is no grant before the court capable of being confirmed. In the circumstances the parties are ordered to petition a court of competent jurisdiction for a grant of letters of administration a fresh, before they can be appointed as administrators of the Estate and before the grant can be confirmed, to allow them to distribute the estate of the deceased.

This application is therefore stands dismissed.

SIGNED DATED and DELIVERED in open court this **20th day of July 2015.**

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L. A. ACHODE

JUDGE