



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MACHAKOS**

**SUCCESSION CAUSE NO. 887 OF 2009**

**IN THE MATTER OF THE ESTATE OF NENE OLE NAIROTI (DECEASED)**

**NANGOYIA ENE NINI ..... APPLICANT**

*versus*

**METUI OLE NENE ..... RESPONDENT**

**RULING**

1. Letters of Administration Intestate in respect of the Estate of

**NINI OLE NAIROTI (deceased)** were issued to **METUI OLE NINI** alias **METUI OLE SOIKAN** on the 11<sup>th</sup> day of July 2011 and confirmed on the 6<sup>th</sup> day of March 2012.

2. On the 12<sup>th</sup> June 2012, the applicant filed an application

seeking revocation and/or annulment of the grant on the ground that:-

- **The proceedings that culminated in the obtaining of the grant of letters of administration were defective.**
- **The letters of administration were obtained fraudulently by the making of false statements and/or concealment.**
- **The grant was obtained by means of untrue allegations of facts that were essential in justifying the grant.**

3. By an affidavit in support of the application, the applicant

deponed that the deceased was survived by herself and her half-brother Metui Ole Soikan. The petitioner to whom the grant was issued did not inform her about his intention to petition for the Letters of Administration since he maliciously intended to disinherit her. The grant was obtained fraudulently through reliance on false statements and /or concealment from the court of material facts. The administrator has sold almost all the property including land upon which she (applicant) has resided for several years. It will be in the interest of justice that the grant be revoked.

4. In a response thereto Metui Ole Nini alias Metui Ole Soikan

swore an affidavit denying the allegation that the deceased was the father of the applicant. Denying that the applicant is his half-sister he stated that the deceased was survived by himself and Kuinyo Ene Nini

(widow) aged 84 years old who is his biological mother.

5. Further he stated that the applicant was not a beneficiary

but wanted to unlawfully benefit from the estate of the deceased to cause anguish to the family. He prayed for dismissal of the application.

6. In a further affidavit, the applicant deposed that the deceased

was not the respondent's biological father. She recognized him as a half-brother because his mother was married to her father. The certificate of death in possession of the respondent was issued fifteen days after the first one was issued. The deceased was her biological father. He was survived by herself and the respondent because the respondent's mother was married to another man and upon her demise she was buried in Nairobi. The deceased was married to three wives a fact not disclosed to the court. Her mother inherited 23 acres of land being title No. Loitoktok/Ngama/142 which land should devolve upon her and her two (2) siblings who are married. The respondent employed covert methods aimed at chasing her away from their home and her late father's fortune such as burning her house in 1997, attempted rape and threats to kill her forcing her to take refuge in Tanzania.

7. The application was canvassed by way of written

submissions.

8. Issues to be determined are:

- ***Whether the deceased was survived by the applicant, Nangoya Ene Nini.***
- ***Whether the respondent obtained letters of administration fraudulently through making of false statements and/or concealment of material facts to the case.***
- ***Whether the proceedings that culminated in the obtaining of the grant of representation were defective.***

9. The applicant adduced in evidence a death certificate No. C 328524 issued on the 13<sup>th</sup> day of July 2009. According to the entries thereon, the deceased Nene Nairobi died on the 7<sup>th</sup> May 1993 at the age of 71 years. The death was registered on the 13<sup>th</sup> July 2009. The applicant signed the document in her capacity as the daughter of the deceased. The death certificate relied on by the respondent at the point of petitioning for letter of administration was C. No. 328552. The deceased is described as Nini Ole Nairobi who died at the age of 93 years. The informant of the death described himself as the son of the deceased. The document was issued on the 28<sup>th</sup> July 2009. Both parties seem to be in agreement that both documents are in respect of one (1) person. It is apparent that the first person to be issued with the death certificate was the applicant.

10. The applicant obtained a letter from the Chief, Entarara Location dated 21<sup>st</sup> March 2011. According to the content of the letter the deceased hailed from Kikelelwa Village Illasit, Entarara Location, Rombo Division, Loitoktok District and he was survived by Nangoiya Ene Nini (daughter) Metoi Ole Soikau (Nene) (son).

11. The Respondent on the other hand relied upon a letter issued by the Chief of Rombo Location dated 29<sup>th</sup> December 2008 which gave names of two (2) person who survived the deceased as:

**“ - Kuinyo Ene Nini (widow)**

**- Metui Ole Nini (widow)”**

The issue of their relationship needs clarification. These were persons that were disclosed to the court as beneficiaries of the estate of the deceased.

12. The two (2) death certificates were issued by the Kajiado registry of deaths. This calls for an explanation.

13. After the initial death certificate was issued to the applicant

on the 13<sup>th</sup> July 2009 she retained it and did not use it to

petition for letters of administration. It is denied that the applicant is the deceased's daughter. She was not subjected to cross examination to disapprove the allegation. It would be important to establish if indeed the applicant is the deceased's biological daughter as opposed to the respondent who is alleged to be a step-son.

14. According to the law, a grant of representation whether confirmed or not, may be revoked or annulled. Section 76 of the Law of Succession

Act provides thus:

***“76. A grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by any interested party or of its own motion:***

***a. that the proceedings to obtain the grant were***

***defective in substance;***

***b. that 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. that the person to whom the grant was made has***

***failed, after due notice and without reasonable cause either:-***

***i. to 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***

***ii. to proceed diligently with the administration of the estate; or***

***iii. 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.***

15. As correctly submitted by counsel for the respondent who

cited the case of **In the matter of the Estate of Julius Nyathogo Opondo (deceased) Succession Cause No. 78 of 2013**, the applicant had a duty of proving circumstances that should make the

court revoke the grant. In the instant case the applicant has proved on a balance of probabilities that to obtain the grant one of the documents used (death certificate) was obtained from the Registrar of Deaths, Kajiado after another Death Certificate had been issued to her. This was evidence of some fraud having been perpetrated. It goes to the core of the grant having been obtained following use of a fraudulent document.

16. This is a case where evidence must be adduced to prove who

indeed is the beneficiary of the deceased. In the circumstances justice calls upon this court to revoke the grant which I hereby do.

17. This being a succession matter each party will bear their

own costs.

18. It is so ordered.

**DATED, SIGNED and DELIVERED at MACHAKOS this 16<sup>TH</sup> day of JULY 2015.**

**L.N. MUTENDE**

**JUDGE**