



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 343 OF 2006

**IN THE MATTER OF THE ESTATE OF WACHIRA KIORE MANYETU alias SAMUEL
WACHIRA KIORE (DECEASED)**

RULING

1. The deceased person the subject of these proceedings died on 29th July 1999.
2. Representation to his estate was sought *vide* a petition presented to court on 17th February 2006 by Mary Waithira Wachira and Evan Ndungu Wachira, in their respective capacities as widow and son, respectively, of the deceased. He was expressed to have been survived by the widow and son, and four daughters, being Njoki Kiiru, Susan Watere Muchiri, Esther Mukami Nganga and Serah Njeri Wachira. There was attached to the petition a letter from the Chief of Wanjohi Location confirming the six (6) to be the survivors of the deceased. He was expressed to have died possessed of three pieces of land known as Nyandarua/Wanjohi Block 1/Ngarua Rironi/136, 142 and 148.
3. A grant of letters of administration intestate was accordingly granted to the petitioners on 28th April 2006. The grant was confirmed on 10th December 2007, and a certificate of confirmation of grant of even date was issued. The estate devolved upon Evan Ndung'u Wachira, Njoki Kiiru, Esther Mukami Ng'ang'a, Susan Watere Muchiri and Serah Njeri Wachira.
4. On 9th June 2014 a summons for the revocation of the grant of 28th April 2006 was lodged at the registry by Mary Njeri Wachira and others. They claimed that the grant in question had been obtained through a defective process which was founded on fraud and misrepresentation. Their case was that the deceased had been a polygamist having married twice. He was therefore survived by two widows, and their children, yet the administrators had only disclosed the house of the first widow and concealed the existence of the second widow and her children. They stated that the estate of the deceased was distributed to the exclusion of the second house. They also stated that one asset known as Muguga/Jet Scheme/1648 had been left out.
5. The reply to the application took the form of an affidavit sworn by one of the administrators, Evan Ndung'u Wachira, on 8th August 2014. The administrators case was that the deceased had sold a portion of Muguga/Jet Scheme/1648 and from the said sale acquired Nyandarua/Wanjohi/Block 1/Ng'arua Rironi/136, 142 and 148. The administrators and their side of the family were settled on Nyandarua/Wanjohi block 1/Ng'arua Rironi/136, 142 and 148, while the applicants remained on Muguga/Jet Scheme/1648. They alleged that the deceased had made a will on 10th July 1999 wherein the Nyandarua lands were given to the second administrator, Evan Ndung'u Wachira and the Muguga Jet Scheme property was given to the first applicant, Margaret Wanjiru Wachira, and Peter Wachira Njuguna. The administrators proposed that instead of revoking the grant the court ought to have the certificate of confirmation of grant rectified to include Muguga/Jet Scheme/1648 and to distribute it among the applicants.

6. I had directed on 27th October 2014 that the said application be disposed of by way of written submissions. The administrators filed their written submissions, but the applicants did not. On 10th February 2015 I directed that the application be determined on the basis of the affidavits on record.
7. Revocation of grants is provided for under Section 76 of the Law of Succession Act, Cap 160, Laws of Kenya. A grant is liable to be revoked if the process of obtaining it is defective or is founded on fraud and misrepresentation or the administrators fail to administer the estate diligently or the grant has become useless and inoperative.
8. The application before me appears to be anchored on three grounds. The applicants appear to say that the process of obtaining the grant was defective, that there was fraud and misrepresentation and that the administration was not done diligently.
9. The process of obtaining grant is governed by Section 51 of the Law of Succession Act and Rule 7 of the Probate and Administration Rules. Section 51(2) and Rule 7(1) set out the particulars that must be disclosed in an application for grant.
10. The relevant portion of Section 51(2) states as follows-

“An application shall include information as to-

- a. ...
- b. ...
- c. ...
- d. ...
- e. **Whether or not the deceased left a valid will;**
- f. **The present addresses of any executors appointed by any such will;**
- g. **In cases of total or partial intestacy, the names and addresses of all surviving spouses, children, parents, brothers and sisters of the deceased, and of the children of any child of his or hers then deceased;**
- h. **A full inventory of all the assets and liabilities of the deceased, ...”**

11. Rule 7(1) on the other hand states:-

“... the application shall be by petition ... supported by an affidavit ... containing ... the following particulars-

- a. ...
- b. ...
- c. **Whether he died testate or intestate and, if testate, whether his last will was written or oral, and the place where and the date upon which it was made;**
- d. **A full inventory of all his assets and liabilities at the date of his death (including such, if any, as may have arisen or become known since that date) together with an estimate of the value of his assets, movable and immovable, and his liabilities;**
- e. **In cases of total or partial intestacy-**
 - i. **The names, addresses, marital state and description of all surviving spouses and children of the deceased, or, where the deceased left no surviving spouse or child, like particulars of such person or persons who would succeed in accordance with Section 39(1) of the Act;**
 - ii. ...”

12. The petition lodged in court on 17th February 2006 was for a grant of letters of administration intestate and it was alleged in the petition that the deceased had died intestate. That being the case, the petitioners ought to have complied with the requirements of Section 51(2)(g) of the Act and Rule 7(1)(e) of the Rules by disclosing all the persons who survived the deceased.

13. It is common ground that the deceased was a polygamist. He had married twice, and he had children with both wives. The petitioners only disclosed the first wife and her children, and thereby created an impression that the deceased had only one wife and his survivors were the said widow and her children. There other family was not disclosed. That was a clear contravention of Section 51(2)(g) of the Act and Rule 7(1)(e) of the Rules. The process of obtaining the grant was therefore defective. The concealment amounted to fraud and misrepresentation for the existence of the second wife and her children was a fact well – known to the petitioners. The non-disclosure of these persons must have been for some sinister motive.
14. Section 51(2)(h) of the Act and Rule 7(1)(d) of the Rules require a full inventory of the assets of the deceased. It is common ground that the asset known as Muguga/Jet Scheme/1648 was not disclosed. The petitioners knew of its existence, but for some ulterior reason they chose to conceal it from the court in contravention of the clear provisions of Section 51 and Rule 7.
15. In their reaction to the application, the respondents alleged that the deceased died testate. He had allegedly made a will on 10th July 1999, roughly three weeks before he died. A copy of the alleged will was attached to the replying affidavit.
16. Section 51(2)(e) of the Act and Rule 7(1)(c) of the Rules require petitioners to disclose whether the deceased died testate or not. The petitioners, who are now the administrators, in reply to the application for revocation of the grant stated that the deceased had in fact died testate. If he died testate, why then did they not disclose that to the court in the petition they lodged in court on 17th February 2006? Why did they not produce the will then? Why did they have to wait to produce the will after an application for revocation of grant was lodged in court? Why did they state to court that the deceased had died intestate? If indeed, the deceased died intestate and the grant on record was sought on the basis that he died testate, then the process of obtaining the grant was defective and there was fraud and misrepresentation.
17. I do not think I need to say more. The applicants have established a case for the revocation of the grant made on 28th April 2006.
18. The orders that I shall make in the circumstances are as follows:-
 - a. **That the grant of letters of administration intestate made on 28th April 2006 to Mary Waithira Wachira and Evan Ndung'u Wachira in relation to the estate of Wachira Kiore Manyetu is hereby dismissed;**
 - b. **That the orders made on 10th December 2007 confirming the grant made on 28th April 2006 are hereby vacated and the certificate of confirmation of grant of even date is hereby cancelled;**
 - c. **That all transactions conducted on the basis of the certificate of confirmation of grant dated 10th December 2007 are hereby annulled and the Land Registrar responsible for Nyandarua County is hereby directed to cancel all transfers effected on Nyandarua/Wanjohi Block 1/136, 142 and 148 and revert the said titles to the original owner, Wachira Kiore Manyetu alias Samuel Wachira Kiore;**
 - d. **That the parties to agree-**
 - i. **On whether the deceased died testate or intestate; and**
 - ii. **On the persons, one from each house of the deceased, who are to administer the estate;**
 - e. **That the matter shall be mentioned after thirty (30) days to receive reports on (d) above;**
 - f. **That the applicants shall have costs of the application.**

DATED, SIGNED and DELIVERED at NAIROBI this 9TH DAY OF OCTOBER, 2015.

W. MUSYOKA

JUDGE