



**REPUBLIC OF KENYA.**

**IN THE HIGH COURT OF KENYA AT KITALE.**

**SUCCESSION CAUSE NO. 186 OF 2008.**

**PETER RUGU NJOROGE.....DECEASED.**

**AND**

**AMOS GITHAE RUGU & ANOTHER.....APPLICANTS.**

**R U L I N G.**

Peter Rugu Njoroge (herein, the deceased) died on the 30th July, 2005, at the age of eighty one (81) leaving behind two widows and twelve (12) children or thereabout including the applicants and the respondents in the application dated 4th June, 2013 made by three daughters of the deceased against two sons of the deceased who are administrators of the estate of the deceased by dint of the grant of Letters of Administration Intestate issued to them on the 18th March, 2009 and confirmed on the 28th July, 2011.

The application is essentially for the revocation of the certificate of confirmation of grant issued to the respondents/administrators and to have the estate of the deceased distributed equally amongst all the beneficiaries.

The grounds for the application are that the application for the grant and its confirmation was filed secretly without the knowledge of the applicants and other beneficiaries. That, the distribution of the estate was done unfairly and that the respondents and their children have benefited from the estate to the exclusion of the applicants.

The foregoing grounds are supported by the facts contained in the supporting affidavit dated 4th June, 2013, deponed by the second applicant; Keziah Wanjiru, on her own behalf and that of the other applicants.

Section 76 of the Law of Succession Act (Cap 160 LOK) provides for revocation or annulment of grant if it was obtained fraudulently by making false statements or if it was obtained by concealment of material facts "*inter-alia*".

In their objection to the present application, the respondents/petitioner-administrators, have deponed a replying affidavit dated 28th October, 2013, in which they deny allegations of fraud and concealment of facts made against them by the applicants and contend that the grant was obtained and confirmed with the knowledge of the applicants and that the applicants and all other beneficiaries were included in the same.

The application was argued by way of affidavit evidence and written submissions were filed by both sides in that regard through the firms of **Kidiavai and Company Advocates** for the respondents/petitioners and **Yano & Co. Advocates**, for the applicants.

This court has carefully considered the application in the light of the supporting grounds and those in

opposition and in the light of the submissions presented by both sides.

With regard to the allegations that the grant was obtained and confirmed secretly and without the knowledge of the applicants and other beneficiaries, the supporting affidavit by the first and second respondents dated 27th October, 2008 was signed by most of the beneficiaries thereby indicating that they were aware of the application made by the respondents for grant of letters of administration. The affidavit also indicate the names of the beneficiaries.

However, the name and signatures of the first and second applicants/objectors (Mary Njoki Kanini and Keziah Wairimu) are lacking thereby implying that they had no knowledge of the application. The name and signature of the third applicant is reflected in the affidavit whether she went by the name Grace Wanjiru Kagucia or Grace Wanjiru Watari.

So, ground one of the application is not substantially disputed and is hereby sustained and more so, considering that the name of the first applicant was also left out in the affidavit deponed by the first respondent on 23rd May, 2011, in support of the summons for confirmation of grant. However, the names of the second and third applicants are included therein. The agreed mode of distribution dated 23rd May, 2011, was also not signed by the first applicant given that she is Mary Njoki Kanini and not Mary Muthoni Ndegwa. However, the names and signatures of the second and third applicants are reflected therein and no evidence was adduced that the signatures were forgeries.

It is however intriguing that the first widow Gladwel Mwhaki Rugu, signed the mode of distribution on 23rd May, 2011, yet she reportedly died on 19th March, 2011, as confirmed by the appropriate death certificate annexed to the applicant's supporting affidavit dated 4th June, 2013 (i.e. Annexure marked "KW2"). The fact that the said Gladwel Mwhaki Rugu was not alive at the time she purportedly signed the mode of distribution is a pointer to bad faith on the part of the respondents but not necessarily a pointer to forgery of the signatures of the second and third applicants in the agreed mode of distribution.

The bad faith alluded hereinabove would in essence support the allegation by the applicants that the distribution of the estate was not done fairly in as much as it was skewed in favour of the respondents at the expense of the rest of the beneficiaries (see ground four of the application together with ground five).

With regard to ground two, it is evident that the first applicant as opposed to the second and third applicant did not give her consent to the suggested mode of distribution and appears to have been left out of the distribution exercise.

With regard to ground three, the fact that the first and second applicants were not listed as beneficiaries in the application for grant of letters of administration dated 27th October, 2008 was an indication that the respondents failed to disclose all material facts and more so, with regard to the number of the beneficiaries, unless of course, the first and second applicants used different names at the time.

Basically, the applicants have established their claim for this court to exercise its discretion in their favour. However, what is apparent is that the dispute did not centre on the appointment of the respondents as administrators of the estate of the deceased but rather on their management and distribution of the estate which required to be done in an equitable manner considering that the deceased had two wives and several children who all needed to be catered for. In circumstances such as the present one, section 40 of the Law of Succession Act would come handy.

In sum, since the distribution of the estate appears to be the most contentious issue, the present application is granted to the extent that the certificate of confirmation dated 28th July, 2011 be and is hereby revoked with directions that the respondent do undertake a fresh distribution of the estate which must be done in a just and equitable manner to include each and every beneficiary and in keeping with section 40 of the Law of Succession Act. The first and second applicants/objectors may be co-opted into the administration to ensure a just and equitable distribution of the estate. In that regard, the grant of letters of administration dated 18th March, 2009, shall be amended to include the first and second

applicants(i.e. Mary Njoki and Keziah Wairimu) as co-administrators.

Ordered accordingly.

**[Read and signed this 12th day of March, 2014.]**

**J.R. KARANJA.**

**JUDGE.**