



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
SUCCESSION CAUSE NO. 1346 OF 2013
IN THE MATTER OF THE ESTATE OF NGANGA KAMUNGE (DECEASED)
RULING

1. The summons for revocation is dated 11th June 2013. It is at the instance of two beneficiaries who seek to have the grant made in Githunguri SRMCSC No. 6 of 2002 revoked.
2. From the joint affidavit of the applicants, it is plain that they are dissatisfied with the distribution of the estate. They claim that they were not consulted and that they did not consent to the distribution.
3. The administrator responded to the application vide his replying affidavit sworn on 4th September 2013. I note that his reply is silent on whether the applicants were consulted during the process of obtaining the grant and on whether they consented to the proposed mode of distribution.
4. I have perused the record in Githunguri SRMCSC No. 6 of 2002. I do note that on 21st November 2002 when the grant was confirmed it is stated that the parties were present. The names of the alleged parties are not indicated. It is therefore not clear whether the applicants participated in the proceedings of that day.
5. Revocation of grant is provided for under Section 76 of the Law of Succession Act. A grant will be revoked either where there were problems with the process of its making or where there are problems with the process of administration.
6. In the instant case, the applicants are not complaining about either of the two processes alluded to in paragraph 5 above. It is the distribution that they are unhappy about. Ideally, a grant ought not be revoked merely because there are issues raised about its confirmation.
7. I am not satisfied that the applicants were properly involved in the confirmation process. Indeed, the record of the lower court is not clear on their involvement. The office of administrator of an estate is an office of trust. Where trust is lost doubts crop in. This is what has happened here. The administrator appears to have left the applicants in the dark regarding distribution hence there was loss of trust in the process.
8. I do hereby decline to revoke the grant made on 24th March 2002. Instead, I shall make the following orders:-

(a) That the confirmation proceedings conducted on 21st March November 2002 in Githunguri SRMCSC No. 6 of 2002 are hereby set aside;

- (b) That the certificate of confirmation of grant issued in the said case on 21st November 2002 is hereby cancelled;
- (c) That the court file in Githunguri SRMCSC No. 6 of 2002 shall be returned forthwith to the Githunguri Law Courts;
- (d) That administrator shall file a fresh application for confirmation of grant at the Githunguri Law Courts once the file is returned there in a process which shall include or involve all the survivors of the deceased;
- (e) That the said confirmation application shall be filed within thirty (30) days of the date of this order, failing which the grant made on 24th March 2002 shall stand revoked, and
- (f) That each party shall bear their own costs.

DATED, SIGNED and DELIVERED at NAIROBI this 3rd DAY OF October 2014.

W. MUSYOKA

JUDGE

In the presence of the parties in person.