



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MURANG'A**  
**SUCCESSION CAUSE NO. 755 OF 2013**

***IN THE MATTER OF THE ESTATE OF THUO MEGWE alias THUO MIGUI alias G.THUO  
MIGWI (DECEASED)***

**MARY NYAGA.....APPLICANT**

**VERSUS**

**MICHAEL KAMAU THUO.....RESPONDENT**

**JUDGMENT**

The applicant has filed in this court a summons dated 6<sup>th</sup> December, 2011 for revocation of grant; it has been brought to court under **section 76** of the **Law of Succession Act, Cap 160** and **Rules 44, 59** and **73** of the **Probate and Administration Rules**.

The grant sought to be revoked was made to the respondent on 31<sup>st</sup> May, 2010 and confirmed on 10<sup>th</sup> May, 2011.

The respondent is the son of Thuo Megwe (the deceased) and also the administrator of his estate which is the subject of the summons of revocation of grant herein.

According to the petition for letters of administration filed in the magistrate's court, the deceased died while domiciled in Kenya on 16<sup>th</sup> July, 2007. Amongst the assets that comprised his estate is a landed property identified in the petition and certificate of confirmation as **UNS. SSS 10 PLOT NO. 386 THIKA MUNICIPALITY** (hereinafter referred to as "the suit property").

According to the affidavit sworn by the applicant in support of the summons for revocation of grant, the applicant purchased the suit property on 11<sup>th</sup> November, 2000 at a contractual sum of Kshs. 120,000/=. The sale agreement was executed between her and the deceased. Upon payment of the full purchase price the deceased handed over to the applicant a copy of the letter of allotment from the Commissioner of Lands; a copy of the allotment letter from the Municipal Council of Thika and a copy of the consent to transfer the suit property from the Commissioner of Lands.

The basis of the applicant's application is that despite having purchased the suit property from the deceased, the respondent obtained letters of administration in respect of the deceased's estate without any reference to him and worse still, the respondent has been allocated the suit property in the distribution of the deceased's estate. The applicant thus wants the grant revoked on the ground that it was obtained by concealment from the court of material facts which he has stated to be:-

1. That the applicant purchased the suit property from the deceased;
2. That that there was a sale agreement executed between the deceased and the applicant in respect of the suit property;
3. That the deceased obtained the relevant consent to transfer the suit property;
4. The summons for confirmation of grant was heard and allowed without notice to the applicant though he had lodged a caveat in the succession cause;
5. That the applicant sought review of the court's order confirming the grant but the application was declined.

In an affidavit sworn in response to the applicant's summons the respondent has said that he is not aware of any sale agreement that the deceased may have entered into with the applicant in respect of the suit property.

The respondent has also contested the applicant's status as an objector because, according to him, she never filed any objection to the petition for grant of letters of administration. As for the applicant's claim that she filed a caveat, the respondent says that the alleged caveat was filed after the court had confirmed the grant of letters of administration. He wants the summons dismissed.

Parties took directions to the effect that the summons for revocation of grant be disposed of by way of written submissions; they subsequently filed and exchanged submissions as directed. I have, on my part, considered those submissions.

Although the main ground upon which the summons is based is that the respondent obtained the grant of representation and had it confirmed by concealment of facts material to the case, I have not been able to see evidence of such concealment in the material placed before me. I have carefully read the affidavit in support of the summons and nowhere has the applicant deposed that the respondent was seized of the knowledge of the sale agreement executed between her and the deceased in respect of the suit property. If anything, the respondent himself has denied that such an agreement ever existed.

If one has a genuine interest in a deceased's estate, as the applicant claims to have in the deceased's, his option is not to wait and seek for revocation of grant of representation once it has been made or confirmed. The Law of Succession Act provides him with an avenue to participate, in various capacities, in the petition for the administration of the deceased's estate in pursuit of his claim against the estate. For instance **Section 67** of the Act makes it mandatory that a grant of representation cannot be made without a publication of the notice of the application for such a grant. **Section 68** of the same Act provides an objector with the opportunity to object and even file a cross-application for the grant of representation.

In the instant matter, notice of the application for grant inviting any objections thereto was published in a Government publication pursuant to **section 67 (1) and (2)** of the Act. The applicant did not lodge a notice of objection to the application for grant of representation with the court in any manner whatsoever or within the prescribed time as required under **section 68 (1)** of the Act; indeed no objection was filed at all.

If, because of the applicant's claim against the deceased or his interest in the deceased's estate, the applicant had lodged the objection contemplated under **section 68(1)** of the Act, the court would have notified the applicant to file an answer to the application for grant of letters of representation and also file a cross-application for such representation within such time as the court would have prescribed.

Besides the means provided by the statutory provisions in section 67 and 68 of the Act, the applicant had also the option to invoke the Probate and Administration Rules and place a caveat in the relevant registry seeking to be notified of any action or intended on the estate of the deceased; with such information the applicant would have been properly placed to take appropriate steps to protect her interest in the estate

when opportunity arose.

From the record in the magistrate's court, it would appear that at some point, the applicant attempted to embrace the caveat route; I say she attempted because the timing of when the caveat was purportedly entered is questionable.

The caveat on which the applicant relies was filed in court on 18<sup>th</sup> September, 2012; as noted, the grant in respect of the estate of the deceased was made on 31<sup>st</sup> May 2010 and confirmed on 10<sup>th</sup> May 2011 more than a year before the purported caveat was filed in the succession cause itself. Having been filed two years after the grant was made and more than a year after it was confirmed, the question is whether such a caveat has any legal effect.

The law on caveats to applications for the making or confirming of grants is found in **Part IV** of the **Probate and Administration Rules** whose statutory basis is **section 97** of the Act.

Under **rule 15(1)** any person who wishes to ensure that he shall receive notice of any application either for the making or the confirming of a grant of representation to the estate of a particular deceased person may enter a caveat in any registry. Such caveat, if filed in a district registry, is forwarded to the principal registry where it is filed and retained (see **rule 15(5)**).

A caveat serves to enable the principal registrar to notify the caveator that an application for making of a grant in respect of an estate in which he has an interest has been lodged and therefore if he is intent on objecting to the making of the grant he should file his objection within thirty days or such other longer period that the registry may allow from the date of receipt of the notification.

Failure to file the objection within the prescribed period renders the caveat futile. In the instant case, the objection was not only not filed but also the caveat that was entered was purportedly entered long after the grant had been made and confirmed.

If the applicant had filed the appropriate caveat at the opportune time, and therefore notified of the respondent's application for grant of representation, she would have had the opportunity to bring to the attention of the court, by way of an affidavit, the matters she has raised in the summons for revocation of grant for the court's consideration before the grant was made and confirmed. Such an opportunity is provided by **rule 16 (1)** of the **Probate and Administration Rules**. It says:-

***16.(1) Any person who wishes to bring to the notice of the court any matter as to the making of or contents of the will of a deceased (whether written or oral), the rights of dependants or of persons who might be entitled to interests on intestacy of the deceased, or any other matter which may require further investigation before a grant is made or confirmed, may file in any registry in which an application for a grant to the estate has been made or in the principal registry an affidavit giving full particulars of the matters in question.***

As it has turned out, the applicant did not file the caveat at the appropriate time and also missed the opportunity to raise, for the court's investigation, matters which could only have been raised before the grant was made and subsequently confirmed.

In my humble view, the applicant's failure to comply with the relevant provisions of the law and ventilate her case at the appropriate time and forum should not be camouflaged as the respondent's concealment from the court something material to the case.

The relevance of sections 67 and **68** of the Act and **rules 15** and **16** of the **Probate and Administration Rules** is to, among other things, cater for situations such as those raised by the applicant; these provisions of the law are certainly not for cosmetic purposes and where a would-be objector, either out of inaction or ignorance, fails or neglects to take advantage of them to pursue his rights, she should not be heard to lay blame on an administrator who has duly obtained the grant of letters administration and had it confirmed. Such person has herself to blame.

In the premises I am bound to conclude that the applicant's summons dated 6<sup>th</sup> December, 2011 is deficient of any merit. It is hereby dismissed with costs.

**Signed, dated and delivered in open court this 6th day of October 2014**

Ngaah Jairus

**JUDGE**