



REPUBLIC OF KENYA



In re Estate of Sandeep Manilal Karia (Deceased) (Succession Cause E094 of 2021) [2024] KEHC 5921 (KLR) (24 May 2024) (Ruling)

Neutral citation: [2024] KEHC 5921 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
SUCCESSION CAUSE E094 OF 2021
HI ONG'UDI, J
MAY 24, 2024**

IN THE MATTER OF THE ESTATE OF SANDEEP MANILAL KARIA (DECEASED)

BETWEEN

BHAVNA SANDEEP KARIA ADMINISTRATOR

AND

NALIN MANILA KARIA 1ST OBJECTOR

SUNIL MANILAL KARIA 2ND OBJECTOR

RULING

1. The objectors herein filed summons dated 14th June 2022 pursuant to the Provisions of Section 76 *Law of Succession Act* and Rules 44 (1) of the *Probate and Administration Rules* requesting for the revocation of the grant of letters of administration issued to Bhavna Sandeep Karia on 20/12/21 on the following grounds:
 - i. The proceedings to obtain the Grant of Letters of Administration were defective as the deceased passed away Testate with a Will and not Intestate as per the application by Bhavna Sandeep Karia.
 - ii. The said Grant of Letters of Administration was obtained fraudulently by the concealment from this court of a material fact that the deceased had a Will, that the parties named herein were at all material times in communication in respect of the same and that the Will of the deceased is being probated in the Supreme Court of Australia which application involves the same estate.
2. The summons for revocation of grant is supported by an affidavit sworn by Nalin Kumar Karia on even date. He deposed that the deceased passed away on 9th May 2021 in Gujrat, India, and Grant of Letters of Administration was made by this court to the administrator herein on the 20th December 2021.



- Further, that the said administrator had fraudulently continued with the said intestate application despite having knowledge of a Will dated 4th February 2003 by the deceased.
3. He deposed further that on 16th August 2021 before the filing of the confirmation application and before issuance of the Grant of Letters of Administration their lawyers known as Trainor and based in Australia, informed the administrator herein through her advocates Sheth & Wathigo of the existence of the Will. Their solicitors on 25th August 2021 informed the administrator herein through her advocates Sheth & Wathigo, that they would be applying for a Grant of Probate with Will in Australia.
 4. He went on to depose that on 10th November 2021 upon request by the administrator's advocates their solicitor provided an unredacted copy of the Will and reminded them of an impending Grant of Probate with Will Application to be filed in Australia. Further, that in applying for and obtaining the grant the administrator herein failed to disclose to the court a material fact that the deceased had a Will. In addition, that there was ongoing communication between the parties in respect of the same, more so that she had received an unredacted copy of the Will before the issuance on the Grant of Letters of Administration.
 5. He deposed that Sheth & Wathigo Advocates on 4th March 2022 through an email confirmed their instructions from the administrator herein that no other assets form part of the Estate save those that are mentioned in the Will. Further, that there were proceedings already underway concerning the estate of the deceased in the Supreme Court of Western Australia. He added that they had on the 27th May 2022 filed for a Grant of Probate with Will.
 6. The administrator in response to the summons for the revocation filed a replying affidavit dated 14th April 2023. She deposed that upon the deceased's demise in May 2021, she began the succession process by consulting her advocates. They advised her that as the widow, she was the first in the order of priority of persons in intestacy to petition for Grant of Letters of Administration. Further, that the deceased's nominee Mr. Henry Aming'a indicated that the deceased had written a will but he could not produce it because it was in her possession. She added that she was not aware of the aforementioned will and the deceased had also not mentioned about it.
 7. She deposed further that on 16th August, 2021, her advocates received a letter from Trainor Legal, a firm of advocates based in Australia informing them that they were holding an alleged original will by the deceased dated 4th February, 2003 and they intended to probate it in Australia. Thereafter, she confirmed to the lawyers in Australia that she was not aware of any will either in her possession or someone else's possession. Thereafter, upon her request for a copy of the alleged will to confirm its authenticity the same was met with evasive tactics. She added that on 25th August, 2021, they received a copy of a redacted will from the said Trainor Legal.
 8. She went on to depose that their request for an un-redacted copy was answered on 10th November, 2021 after she had already petitioned for Grant of Letters of Administration. Further, that her decision to petition for Grant of Letters of Administration was not in bad faith and she had received information on an un-authenticated will. In addition, that the Australian lawyers took their time in responding to their concerns on its authenticity.
 9. She deposed that she had been advised by her advocates on record which advice she believes to be sound, that this honorable court has no jurisdiction over the provisions of the alleged foreign will. Further, the knowledge of its existence did not in any way negate the current intestacy proceedings. She added that as the wife of the deceased, she was automatically entitled in intestacy to the whole share of the deceased unlike the siblings, nephew and nieces of the deceased.



10. The objectors filed a further affidavit dated 31st August 2023 in response to the administrator's replying affidavit. They deposed that the administrator herein filed a petition despite being aware of the existence of the Will. Further, that the grant of probate to be resealed had already been filed in Kenya for purposes of presentation before this court the same having been made on 31st January 2023. They added that their advocates on record had advised them that a Will not containing all the properties as at the time of death did not invalidate it.
11. When the matter came up for directions the court directed that the same be disposed by way of written submissions.

Objectors' written submissions

12. The objectors' submissions were filed by Gilani & company advocates and are dated 1st February, 2024. Counsel identified one issue for determination that is whether the summons for revocation should be allowed.
13. Counsel submitted that the petitioner (the administrator herein) obtained the grant fraudulently by making a false statement and even concealing from the court the existence of the Will. This was contrary to section 76(b) of the Law of Succession Act (Cap 160) Laws of Kenya.
14. She placed reliance on the case of *Estate of Benjamin Ndumba Gachanja* Nairobi High Court Succession Cause number 2172 of 1994 and *Estate of Robert Napunyi Wangila* Nairobi High Court Succession Cause number 2203 of 1999, where grants were revoked for fraudulent concealment of facts.
15. Counsel submitted further that the administrator herein had not objected to the validity of the Will and thus the same was valid for all intended purposes. Further, that the Will has listed both local and foreign properties and the deceased died while abroad leaving a Will that was applicable to his Kenyan assets. He added that the Will should be probated in court and any executor or administrator to administer the estate of the deceased in Kenya since the grant of probate had been issued by a competent court either in Kenya or abroad.
16. In conclusion, counsel urged the court to allow the objectors' application.

Administrator's written submissions

17. The administrator's submissions were filed by Sheth & Wathigo advocates and are dated 15th January, 2024. Counsel identified one issue for determination being whether or not the Grant of letters of Administration issued on 20th December 2021 should be revoked.
18. Counsel submitted that the administrator was the wife of the deceased and having no knowledge of the existence of the Will, she had priority in intestacy to petition for grant of Letters of Administration. Further, that no proof of an original valid Will was presented to the administrator at the time of petitioning for the grant. He added that from the various dates in the pleadings, it was evident that the administrator became aware of the purported original un-redacted Will after initiating the petition for the Grant of Letters of Administration.
19. Counsel submitted further that the allegations of fraud were serious and the objectors had failed to demonstrate that the administrator had fraudulently concealed the material fact that the deceased died testate. He placed reliance on the cases of *Re Estate of David William Kigumu Kimemia (Deceased)* [2021] eKLR and *Vijay Morjaria v Nansingh Madhusingh Darbar & Another* [2000] eKLR.



20. Counsel went on to submit that the administrator only found out that the Will was admitted to probate and resealed in Kenya through the further affidavit by the objectors. Further, that the process of challenging the validity of the Will was underway and that the manner of distribution of properties in the alleged Will was unfair. Counsel cited section 4 of the Law of Succession Act which provides that property situated within the territorial confines of Kenya should be dealt with under Kenya law. She urged the court to disallow the summons for revocation of grant with costs to the administrator.

Analysis and Determination

21. I have carefully considered the application, the affidavits tendered by both parties in and I find the main issue for determination to be whether the Grant of Letters of Administration Intestate issued to respondent on 20th December 2021 should be revoked.

22. In addressing the said issue, section 76 of the Law of Succession Act which provides for revocation and annulment of grant states as follows:

76. Revocation or annulment of grant

“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.”

23. The above section of the Law was clearly expounded on by the court, In re Estate of Prisca Ong'ayo Nande (Deceased) [2020] eKLR where it was stated that:

“Under section 76, a court may revoke a grant so long as the grounds listed above are disclosed, either on its own motion or on the application of a party. A grant of letters of administration may be revoked on three general grounds. The first is where the process of obtaining the grant was attended by problems. The first would be where the process was defective, either because some mandatory procedural step was omitted, or the persons applying for representation was not competent or suitable for appointment, or the deceased died testate



having made a valid will and then a grant or letters of administration intestate was made instead of a grant of probate, or vice versa. It could also be that the process was marred by fraud and misrepresentation or concealment of matter, such as where some survivors are not disclosed or the Applicant lies that he is a survivor when he is not, among other reasons. The second general ground is where the grant was obtained procedurally, but the administrator, thereafter, got into problems with the exercise of administration, such as where he fails to apply for confirmation of grant within the time allowed, or he fails to proceed diligently with administration, or fails to render accounts as and when required. The third general ground is where the grant has become useless and inoperative following subsequent circumstances, such as where a sole administrator dies leaving behind no administrator to carry on the exercise, or where the sole administrator loses the soundness of his mind for whatever reason or even becomes physically infirm to an extent of being unable to carry out his duties as administrator, or the sole administrator is adjudged bankrupt and, therefore, becomes unqualified to hold any office of trust.”

24. In the instant case, the objectors have invited the court to revoke the grant of letters of administration for the reasons that the administrator fraudulently obtained the same by way of concealment of a material fact that the deceased had written a Will. The administrator on her part argues that she only came to know of the existence of the said Will by the deceased after she had already filed the petition for Grant of Letters of Administration. Both parties acknowledge the existence of a Will by the deceased. The administrator challenges its validity and in her submissions, she indicated that she had issued instructions to her advocates to challenge the validity of the said Will.
25. Upon perusal of the court record, this court notes that in the affidavit in support of the application, the objectors annexed a Will dated 4th February 2003 signed by the deceased. The administrator in her replying affidavit at paragraph 8, admitted to the fact that her advocates received a letter from the objectors’ advocate informing them of being in possession of the said Will. She further admits at paragraph 10 of having received a copy of a redacted Will from the objector’s advocate on 25th August 2021 and un-redacted copy on 10th November 2021. It is the respondent’s contention that the petition for grant of letter of administration were not in bad faith since the objectors’ advocates delayed in responding to her concerns of the validity of the Will.
26. Further, from the court record it is evident that the administrator petitioned for grant of letters of administration and the same was issued on 20th December 2021. This was after the correspondence by the parties’ advocate on the existence of a Will. There is no doubt that the administrator knew that the deceased had left a Will but decided not to bring the same to the attention of the court whether the same is valid or not. It was for the court to rule on its validity.
27. In my opinion, the acts by the administrator and her own admission as stated above amounted to concealing of material facts which ought to have assisted the court in arriving at a just decision. This was an outright breach of Section 76 (b) of the Law of Succession Act and the same warrants a revocation of the Grant of Letters of Administration issued to her on 20th December 2021. Let the administrator follow up on the issue of the validity of the Will before the court hearing the matter. Once that is sorted she can be advised by her lawyers on the next steps to take.
28. The upshot is that the objectors’ application is merited and is hereby allowed.
29. The grant of letters of administration dated 20/12/2021 and issued to Bhavna Sandeep Karia is hereby revoked.
30. This being a family matter there shall be no order as to costs.



31. Orders accordingly

DELIVERED VIRTUALLY, DATED AND SIGNED THIS 24TH DAY OF MAY, 2024.

H. I. ONG'UDI

JUDGE

