



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT EMBU**

**SUCCESSION CAUSE NO. 449 OF 2006**

**IN THE MATTER OF ESTATE OF CHARLES NTWIGAH BURINI (DECEASED)**

**VICTORIA NJOKI NJIRU**

**ELIAS MURIITHI NJIRU.....PETITIONERS**

**VERSUS**

**HUMPREY MUGAMBI BURINI.....1<sup>ST</sup> APPLICANT**

**CAROLINE GATWIRI NTWIGAH.....INTENDED 2<sup>ND</sup> APPLICANT**

**RULING**

1. Before this court is summons dated 10/12/2019 and brought under Rules 49 and 73 of the Probate and Administration Rules wherein the intended 2<sup>nd</sup> applicant seeks leave to be enjoined in this matter as the 2<sup>nd</sup> applicant and further for costs of the application to be provided for.
2. The summons is supported by the grounds on its face and by the supporting affidavit of intended 2<sup>nd</sup> applicant. In a nutshell, the 2<sup>nd</sup> applicant's case is that the deceased herein was her father who was married to her deceased mother, one Mercy Gatakaa Mbogori, and as such she is a beneficiary of the estate of the deceased and entitled to be a party to the proceedings. That the applicant herein is her uncle being the deceased' elder brother and who was her guardian after the death of her mother and father. That when the proceedings herein were commenced, she was only 10 years old and the proceedings herein were filed on her behalf by the applicant and that being the only child of the deceased, she is the only successor and/ or beneficiary of his estate. That, now that she is an adult she should be enjoined in the proceedings as a 2<sup>nd</sup> applicant as the proceedings herein are for her benefit.
3. The said application is opposed vide a replying affidavit sworn by Victoria Njoki Njiru- one of the petitioners - wherein she deposed that the instant application is an afterthought and meant to derail the proceedings which are at the final stage and that the delay in enjoining the intended applicant is inordinate and inexcusable. That the applicants have closed their case and the respondents have proceeded to a good extent and key witnesses have been heard and thus to enjoin the intended applicant will be tantamount to opening the proceedings afresh and will cause re-opening of the applicant's case. Further that enjoining the intended applicant will prejudice the respondents' defence as the court will have no opportunity to test the veracity of her evidence.
4. The application was canvassed by way of written submissions wherein each of the parties reiterated their rival positions as exhibited in their respective pleadings.
5. I have considered the application, the responses thereto and the rival written submissions filed by the parties herein and it is my view that the main issue for determination is whether the intended applicant has made a case for enjoinder in the cause.
6. The pending application is for revocation of grant issued to the petitioners herein. In the said application, the 1<sup>st</sup> applicant herein deposed that the petitioners are strangers to the estate of the deceased and that the children indicated in the petition as survivors of the deceased are not so. He further deposed that the deceased known wives were Mercy Mbogori (whom the deceased separated with, after marriage ,and who is the mother to the intended 2<sup>nd</sup> applicant) and one Faith Wanjiku and which two wives are deceased. It is this application which the applicant seeks to be enjoined as an applicant.
7. As I have already noted, the application is brought under Rules 49 and 73 of the Probate and Administration Rules. The application seeks enjoinder of the intended 2<sup>nd</sup> applicant in the instant proceedings. The Law of Succession Act and the Probate and Administration Rules do not have provisions for joinder of parties in succession matters. However, rule 73 provides for inherent powers of the court to make any order for the interests of justice to be met.

8. I have perused the court record and more so the pending application for revocation of grant. I note that the application revolves on the issue as to whether the petitioners are the right persons to administer the estate. At the conclusion thereof, the court will have to make a determination as to whether the petitioners herein are the suitable administrators and if not, new administrators will have to be appointed who will proceed to file summons for confirmation of the grant.

9. I note that the applicant in the application has already closed his case and the respondents have only two witnesses remaining to be called. I further note that the intended 2<sup>nd</sup> applicant submitted that she does not intend to call any evidence but only want to be enjoined as an applicant herein. From the reading of the application and the response thereto, it is not in dispute that the intended 2<sup>nd</sup> applicant is a daughter of the deceased herein and that the 1<sup>st</sup> applicant is the brother to the deceased. However, it is my view that the intended applicant has come too late in the day. As I have already noted, the end result of the application herein is either confirming the petitioners as the administrators of the estate or altering the same. There will be an application for confirmation of grant which will be made at which stage, the 2<sup>nd</sup> applicant can challenge the same by filing an affidavit of protest.

10. It is my view that the intended applicant now that she deposed that the 1<sup>st</sup> applicant made the instant application on her behalf but she has now turned 18, she ought to have made her own application for revocation. She is an interested party within the meaning of section 76 of the Law of Succession Act who has the locus to file for revocation of grant on her own as an interested party. Her interests cannot be well taken care of at this late stage. She will not be of any benefits to the instant application now that there is no input she is bringing herein having stated that she does not intend to re-open the proceedings.

11. Considering the above, it is my view that the instant application is misplaced and the same ought to be dismissed and the pending application for revocation of grant proceeds to hearing.

12. It is thus dismissed.

13. It is so ordered.

**Delivered, dated and signed at Embu this 24<sup>th</sup> day of February, 2021.**

**L. NJUGUNA**

**JUDGE**

.....for the Petitioners

.....for the Applicants