



**REPUBLIC OF KENYA**

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

**SUCCESSION CAUSE NO. 373 OF 2005**

**IN THE MATTER OF THE ESTATE OF WANJA ANAMSINGH (DECEASED)**

**GURDIL SINGH HARNAM SINGH.....PETITIONER**

**VERSUS**

**VICTOR AMAR KINOTI.....OBJECTOR/APPLICANT**

**JUDGMENT**

1. WANJA ANAMSINGH (“the deceased”) died on 15/2/2003 leaving behind 6 children, namely: -

**Gurdil Singh Harnam Singh-Son**

**Frank Singh M’Kanoti-deceased**

**Mrs. Balvant Gudid Raimbir- deceased**

**Mrs. Partap Kaur**

**Kirpal Singh**

**Mrs. Inderjit Kaur- deceased**

2. The petitioner solely petitioned for grant of letters of administration intestate which was issued to him on 13/12/2005. That grant was subsequently confirmed on 21/5/2013, and a certificate of confirmation of grant issued.

3. Subsequently, the applicant, Victor Amar Kinoti, on the 26/05/2020, while asserting the right of a grandchild, filed summons for revocation of grant dated the 14/05/2020 on 26/5/2020 on the usual grounds that the cause was filed and pursued in secrecy, that the proceedings leading to the grant were defective in substance, were tainted with fraud, concealment of material fact and declaration of false statements and that the petitioner having been issued with the grant has refused or failed to distribute the estate according to the wishes of the family members.

4. When the matter was placed before the court on the 21/09/2020, counsel for the parties herein informed the court that they had agreed to abandon the pursuit for revocation and to proceed only on the issue of distribution of **L.R NGUSISHI/SETTELEMENT SCHEME/78** measuring approximately 6.3 Hectares (**hereinafter referred to as the estate property**) this decision is therefore concerned with and limited to the single question whether the suit property is due for distribution among all the beneficiaries or it should remain to the sole benefit of the petitioner/administrator.

5. A look at the application would show that when the prayer for revocation/annulment is abandoned, no substantive prayer subsists to merit a court’s determination. However, I consider that parties have by consent invoked the court’s inherent powers and requested that I do determine if the only property of the estate is due for sharing among all the children who survived her or if the same is due for the sole benefit of the administrator on the basis that the other children to the deceased had received their shares of the estate during the life time of the deceased.

6. The petitioner/administrator has in his opposition to the application filed two affidavits, a Replying Affidavit and Supplementary Affidavit, in which he reiterates that the deceased had given to all his children property as gifts *inter-vivos* including the petitioner and the objector’s father save that the land given to the petitioner had not been transferred to him as at the date the deceased died. He has indeed supported such assertions with documents including those showing that the estate property now in dispute had been unlawful transfer to one Erustus M Gituma and it took the petitioner’s intervention to have the alienation reverted in favour of the deceased. He equally exhibited

receipts for payment of rates for the same property. He further asserted that even after the deceased had died, one John Bosco Mwangi Ndonga entered the land and set up a claim for ownership thereof and it took the efforts of the administrator to defend the claim and retain the land he has always used and reside on. To those facts the objector raised no rebuttal. Even the assertion that the objector's father was given land in Fort Ternan –Muhoroni settlement scheme known as L.R No. 127/527 FORT-TERNAN SCHEME, which he sold and used proceeds to buy land he holds to date in Meru

7. On the basis of such fact the administrator contends and asks the court to find that the other beneficiaries including father to the objector were adequately advanced and gifted as to be disqualified to seek more from the estate. The fact that the surviving children of the deceased are content was emphasised and a buttress and support of his position that all were gifted inter-vivos.

8. Parties then filed submissions in which only the facts were reiterated with none citing any decision as a guide to the court.

9. I have anxiously considered the parties position. While the objector takes the rigid position that the estate of an intestate ought to be share equally among beneficiaries, it appears that no regard was given to the statutory duty upon the court to take into account gifts inter vivos under section 42 of the Act.

10. On the material availed and not disputed by the objector, I do find that the other beneficiaries, including the father to the objector, were given gifts inter vivos by the deceased and are thus not entitled to a share of the estate property.

11. Having found so, I also find that only the petitioner did not have his gift transferred inter vivos and is thus to solely get the only property disputed in this course. In coming to this conclusion, I have noted that the petition did not disclose all the children of the deceased and the grant would have been subject to revocation if not for the fact that the application was abandoned by consent and my finding that the other beneficiaries were adequately provided for by the deceased during her lifetime. I have also taken into account my finding that the property was indeed gifted to the administrator but the transfers were never effected by the deceased during her lifetime.

12. In the end, the application dated 14/05/2020 as adjusted by consent fails and is dismissed. The suit property be transferred to the petitioner as his share in the estate. Let the administration now be pushed towards closure. Mention on 8/12/2021 to record the progress made.

**DATED AND DELIVERED VIRTUALLY BY MICROSOFT TEAMS THIS 11TH DAY OF AUGUST 2021.**

**PATRICK J.O OTIENO**

**JUDGE**

In presence of

Mr. Omari for petitioner/Respondent

Mr. Anampiu for applicant/objector

**PATRICK J.O OTIENO**

**JUDGE**