



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

FAMILY DIVISION

SUCCESSION CAUSE NO. 2668 OF 2011

IN THE MATTER OF THE ESTATE OF RACHAEL WAMBUI CHEGE - (DECEASED)

ROSE WANJIKU MUIITE.....1ST APPLICANT

SAMUEL KARANJA MWATHI.....2ND APPLICANT

JUSTUS KURIA MWATHI.....3RD APPLICANT

FREDERICK CHEGE MWATHI.....4TH APPLICANT

CATHERINE WAIRIMU MWATHI.....5TH APPLICANT

-VERSUS-

TIMOTHY JOE MWATHI NJERI.....1ST RESPONDENT

COLLINS NDEGWA NJERI.....2ND RESPONDENT

EVA ANN WANGUI NJERI.....3RD RESPONDENT

RULING

1. The Deceased Rachael Wambui Chege died intestate on the 28th October 2011. In the affidavit sworn by the applicant Rose Wanjiku Muite on 6th August 2018 in support of the grant of letters of administration intestate, she indicated that she was the daughter of the deceased and that her siblings were Justus G. Kuria, Loise Njeri, Fredrick R. Chege, Ernest Gichuru Mwathi, Samuel P. Karanja and Catherine E. Wairimu. The applicant admits that Loise Njeri died and left three children who are the respondents Timothy Joe Mwathi, Collins Ndegwa Njeri and Eva Ann Wangui Njeri. The petition indicated that the deceased left the following property:-

- (a) Muguga/Kanyariri/T.145;
- (b) Dagoretti/Kinoo/883;
- (c) Muguga/Kanyariri/796;
- (d) Plot No.252 Mwihaki Farmers Co. Ltd; and
- (e) Money at CBA - Account No. 647xxxxxxx.

She got the grant which was confirmed on 27th August 2013. She inherited the entire estate after consent to the application for confirmation was provided by Justus G. Kuria, Fredrick R. Chege, Ernest Gichuru Mwathi, Samuel P. Karanja and Catherine E. Wairimu.

2. Timothy Joe Mwathi Njeri, Collins Ndegwa Njeri and Eva Ann Wangui Njeri (the respondents) filed summons dated 14th September 2018 to revoke the grant. They complained that they had not been involved in the petition leading to the grant, their consent had not been sought or obtained and that they had consequently been disinherited. They were represented by Muumbi & Co. Advocates. The application was served but received no response. Justice Asenath Ongeri heard the application and allowed it on 2nd August 2019. The grant was

revoked and the certificate of confirmation set aside. The property was ordered to revert to the deceased.

3. The applicant and her siblings filed an application dated 23rd June 2020 to set aside the orders of 2nd August 2019 on the basis that the respondents had not served them with the application for revocation. On the basis that the application had been served and had not elicited response, the same was allowed.

4. The present application by the applicant and her siblings seeks that the orders lodged against the suit properties be removed. Once again, the application was served and there was no response. I can see that Mr. Mugu advocate for the applicants says he served by sending an email to the respondents' advocates. The applicants live in the U.S.A.

5. The legal position is that, now that the orders revoking the grant to the applicant were set aside because the applicant was not served with the application leading to the orders, the application became reinstated and the applicant and her siblings now are at liberty to respond to it so that it can be heard interpartes. This is the application dated 14th September 2018. The court has to determine the question whether or not the respondents were entitled to participate in the petition and the distribution of the estate of the deceased.

6. Under **section 47** of the **Law of Succession Act (Cap. 160)** and **rule 73** of the **Probate and Administration Rules**, and in order to do substantive justice to the parties, I give the applicant and her siblings 21 days to respond to the application for revocation, following which the matter shall be mentioned on **7th December 2021** for direction on hearing. Upon service within the response, the respondents shall within 14 days' file any further affidavit.

7. I adjourn the application dated 29th April 2021.

8. I make no orders as to costs.

DATED AND DELIVERED AT NAIROBI THIS 27TH OCTOBER 2021.

A.O. MUCHELULE

JUDGE