



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

FAMILY DIVISION

SUCCESSION CAUSE NO. 329 OF 2008

IN THE MATTER OF THE ESTATE OF MELITUS MUGABE WERE (DECEASED)

EMMANUEL WERE.....1ST INTERESTED PARTY/ APPLICANT
JULIUS WERE.....2ND INTERESTED PARTY/ APPLICANT
DIPHROSE MATENGO WERE.....3RD INTERESTED PARTY/ APPLICANT
JULIANA WERE.....4TH INTERESTED PARTY/ APPLICANT
FRANCIS FLORENCE WERE.....5TH INTERESTED PARTY/ APPLICANT
VINCENT WERE.....6TH INTERESTED PARTY/APPLICANT

VERSUS

AGNES WAIRIMU.....1ST PETITIONER/RESPONDENT
MARIA PALMA.....2ND PETITIONER/RESPONDENT

RULING

1. The deceased Melitus Mugabe Were died intestate on 29th January 2008. On 21st February 2008 the petitioners Agnes Wairimu and Maria Palma in their capacity as widows to the deceased petitioned for the grant of letters of administration intestate. The joint grant was issued on 13th November 2008. This is the grant that the interested parties/applicants Emmanuel Were, Julius Were, Diphrose Matengo Were, Juliana Were, Francisca Florence Were and Vincent Were (1st to 6th applicants, respectively) sought in the application dated 4th December 2008 that it be revoked, annulled and set aside.

2. It is not in dispute that the 1st, 2nd and 6th applicants are the brothers of the deceased. The 4th and 5th applicants are the sisters of the deceased. The 3rd applicant is said to be the widow of the deceased. In the supporting affidavit sworn by the 1st applicant, they denied that the 1st petitioner was a widow of the deceased. They complained that the petition had been filed, and the petition granted, without reference to them, and that this had been done when the petitioners knew that they existed. They stated that, prior to the petition, the petitioners had on 25th February 2008 applied for, and issued with, a special limited grant of letters of administration allowing them to withdraw Kshs.1,200,000/= from the deceased's bank accounts to pay their children's school fees. Upon finding out this, the applicants had on 27th February 2008 applied to be made parties to oppose the special limited grant. They had obtained an order to stay the grant. While the application was pending, the petitioners had secretly petitioned for, and obtained, the grant now subject of this application.

3. It was alleged that the grant had been obtained fraudulently, and in bad faith, with the aim of disinheriting them; that the petitioners had not disclosed to the court that they existed and were dependants of the estate of the deceased; the grant was being used to intermeddle in, and to waste, the estate of the deceased; and, lastly, that three of the children indicated in the petition to belong to the deceased were infact not his children.

4. The application was served on the petitioners but received no response.

5. Under **section 51(2)(g)** of the **Law of Succession Act (Cap 160)** the petitioners were required to include in the petition the names and addresses of all the spouses, children, parents, brothers and sisters of the deceased. In the petition they only indicated themselves and their children. The petitioners knew that the deceased had brothers and sisters. They knew that the 3rd applicant was claiming to be one of the widows of the deceased. They did not include this information in the petition, and did not issue any citations. I find that the conduct of the petitioners was fraudulent, intended to steal a march on the applicants. The petition was defective in substance and the petitioners were guilty of material non-disclosure. The grant is entitled to be revoked (**In re Estate of Charles Ngotho Gachunga (Deceased) [2015]eKLR**).

6. It is now trite that even where a party has made a case for the revocation of a grant, the court rather than revoke the grant may make orders to suit the particular circumstances of the case (**In the matter of the Estate of Thareki Wangunyu aka Thareka Wangunyo (Nairobi H.C Succession Cause No. 1996 of 1999)**).

7. I consider that the court will, during the confirmation of the grant, determine the extent of the deceased's estate, who the widows of the deceased are, who the deceased's children are and whether the 1st, 2nd, 4th, 5th and 6th applicants were dependants of the deceased. Consequently, I recall the grant that was issued to the petitioners on 13th November 2008 and issue a fresh grant of letters of administration intestate in the joint names of Agnes Wairimu, Maria Palma, Emmanuel Were and Diphrose Matengo Were.

8. In view of the age of this dispute, I direct that within 60 days the holders of the new grant, or any one of them, shall apply for the confirmation of the grant. A response to the same shall be filed within 14 days. The file be mentioned on **30th March 2020** for directions.

9. Costs shall be in the cause.

DATED and DELIVERED at NAIROBI this 28TH day of JANUARY, 2020

A.O. MUCHELULE

JUDGE