



**REPUBLIC OF KENYA**

**IN THE HIGH COURT AT NAIROBI**

**(FAMILY DIVISION)**

**SUCCESSION CAUSE NO 71 OF 2015**

**IN THE MATTER OF THE ESTATE OF CHARLES DAVID ANTHONY GITHARIA ALIAS CHARLES DAVID ANTHONY (DECEASED)**

**R U L I N G**

1. The deceased herein Charles David Anthony died intestate on the 21<sup>st</sup> of October, 1987.
  2. The Petitioner/Respondent moved this court on the 16<sup>th</sup> of January 2015 for grant of representation describing himself as an only brother and only survivor of his estate. He listed the estate as ½ share of Tigoni L.R. No. 7660/41. No liabilities were declared. Based on the above information a grant issued to the said Petitioner Charles Henry Koinange Mangua on the 23<sup>rd</sup> of July, 2015. The said grant was confirmed on the 4<sup>th</sup> of May 2016 and the asset given to the Petitioner/ Respondent
  3. On the 4<sup>th</sup> of July 2016 the applicant Billie Jean Wangechi sought for revocation and annulment of the grant based on grounds that the same was obtained fraudulently by making of false statements, concealment of material facts, without locus standi, and with ill motive.
  4. In her supporting affidavit she disposed that she is a daughter of the deceased and one Barbara Beatrice Weiss and was the only child of the deceased herein. She describes the respondent as her paternal uncle and an only brother to her deceased father. She claimed not to have been informed of these proceedings and only learnt of the same from the court record and the Kenya Gazette.
  5. It is her case further that the respondent is not a beneficiary of her late father's estate but an imposter and an intermeddler. That ½ share of 11.5 acres comprising L.R. No.7660/41 which entails her father's homestead and a portion of the shamba ought to devolve to her absolutely.
  6. The said application was also supported by the supplementary affidavit of the applicant and that of the Applicant's mother Barbara Beatrice Nyambura Weiss.
  7. The application was objected to by way of a replying affidavit in which the respondent denied that the applicant was a biological child of the deceased. He further denied that he was in occupation of the land subject matter with the permission of the applicant stating that he resided in the same his since his childhood, continued to do so and has raised his own children therein. He admitted though that the said property was bequeathed to him and his late brother by one L.E.B. Anthony.
  8. As the matter progressed the issue of the applicant Billie Jean Wangechi's paternity was resolved by a consent order filed by the parties on the 16<sup>th</sup> of June, 2017 and where the Respondent/ Petitioner admitted that she is indeed a child of the deceased herein.
  9. It is also not lost to the court that all parties acknowledge that the ½ share of the property subject matter was bequeathed to the deceased herein by his father Lionel Eugene Bavi Anthony in his will dated 4<sup>th</sup> December, 1969. The other half was to go to Koinange Anthony.
  10. A grant of probate was issued to KCB the predecessor to Grindlays Bank on the 10<sup>th</sup> of May 1972 in Probate and Administration Cause No. 123 of 1972 pursuant to the Will of Lionel Eugene Bavi Anthony. It is not clear whether the grant was ever confirmed and if so why the beneficiaries of the estate were not given their respective bequests.
  11. I have seen the affidavit of one Charles Henry Mangua alleging to have met and lived with the deceased mother and having fathered one Anthony and others. The detailed information of his relationship with the deceased mother is irrelevant in this matter.
- Further, assertions regarding Property L.R Tigoni 7660/41 are equally unsubstantiated as KCB who are the executors of the said will of the deceased father did not confirm his said assertion neither did they have authority to add the deceased mother as a beneficiary.
12. I have also seen an affidavit of one Anthony Gichuhi filed in court on 2<sup>nd</sup> December, 2019. He has not filed any objection proceedings

nor did he seek to be enjoined to the cause. He has not been acknowledged as a son either. I will not therefore say more on him.

13. Based on the evidence above I have formed the opinion that the Applicant Billie Jean Wangechi has made out a case for revocation and annulment of the grant issued to the Respondent/Petitioner, which I hereby do. The Petitioner/Respondent did not disclose to the court that his deceased brother had a daughter, neither did he keep the said daughter or her mother informed of these proceedings. He has not made a case either that he was a dependant of his brother.

14. The grant herein Issued earlier having been revoked Billie Jean Wangechi is hereby appointed as the administrator of the estate of her father Charles David Anthony Githaria alias Charles David Anthony.

15. The said Administrator is directed due to the age of the matter to apply for confirmation of the same within the next 30 days.

16. Costs to the Applicant in any event.

**Dated and Delivered in Nairobi on this 26<sup>TH</sup> day of FEBRUARY, 2020.**

**ALI-ARONI**

**JUDGE**