



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

SUCCESSION CAUSE NO. 164 OF 2006

IN THE MATTER OF THE ESTATE OF LATE M'MURITHI TWAMBAE - (DECEASED)

ZIPPORAH KATHAMBI MURITHI.....PETITIONER

VERSUS

DANIEL MUNYUA.....1ST APPLICANT/OBJECTOR

EVANGELINE KATHUKU MURITHI.....2ND APPLICANT/OBJECTOR

JULIUS MUTHAURA MURIITHI.....APPLICANT/PETITIONER

RULING

1. Application for revocation dated 29.10.2008 was filed by Evangeline Kathuku Murithi seeking that grant of Letters of Administration made to Sipora Kathambi M'Murithi on the 19th January 2007 be revoked and costs of the application be also ordered to applicant.
2. The application was supported by grounds on the face of the application and supporting affidavit of Evangeline Kathuku Murithi sworn on 29th October 2008 and the affidavit of Daniel Munyua sworn on 29.10.2008. Daniel Munyua queried that not all dependants were consulted in the process of succession as required by law.
3. Daniel Munyua said the petitioner/Respondent concealed the facts that he was a dependant to the deceased and that the deceased had allocated to him LR Nyaki/Munithu/117. Daniel Munyua averred that the Petitioner didn't bring it to the attention of the court that his mother Evangeline Kathuku Murithi was a dependant of the deceased and was entitled to a share of the estate.
4. M'Muriithi M'tuambae died on 19.1.1998 and was survived by one widow – Zipporah Kathambi and

- Geoffrey Karema
- Janet Mukuba
- Dorcas Ntinyari
- Esther Mugure
- Lucy Mukami
- Mukomunenen M'Muruthi
- Florence Kinya
- Julius Muthaura
- Daniel Gociyia
- Rebeca Mutimbi

Monica M'Muriithi and an interested party Genesio M'Aritho.

5. Asset Nyaki/Munithu/117 grant of letters of Administration was made to Zipporah Kathamibi on 23.1.2007 and confirmed on 12.11.2007 distributing the estate to :-

- Geoffrey Karemu -1 acre
- Julius Muthaura – 3 acres
- Daniel Munyua – 3 acres

- Genesio Mwenda – 1 ½ acres
- Zippora Kathambi – Balance.

6. Subsequently shares were amended through application dated 15.10.2007

7. Application dated 29.10.2008 by Daniel Munyua. Daniel Munyua said letter dated 31.5.2006 purported written by Francis Mwenda as chief was a forgery because the said Francis has never been a chief and didn't have authority to issue letter of introduction. Daniel Munyua averred that the Petitioner committed acts of fraud and is guilty of concealing material facts.

8. I have considered the evidence of applicants 4 witnesses and specifically PW1 Daniel Munyua, PW3 Francis Rimberia Mwangi and PW4 George Muthuri Mwithimbu and PW5 Rebecca Mutimbi plus Monica Karambu –PW6 as PW2 and the 1st Applicant appeared when recalled for further cross examination to be suffering from loss of memory. I have also considered evidence of the Petitioner – Julius Muthaura M'Murithi who said his father had 2 children with Evangeline namely Daniel Munyua and Rebecca. He also confirmed the deceased had 2 other children with Evangeline namely Monica and Jeniffer Kagwiria. Petitioner said that Sarah Kagwiria died in 1975 and Kathukumi M'Murithi also died in childhood before Sarah died.

9. He said the 2 were not alive when succession cause was filed but it is shown in the succession documents they signed consent to making a grant. Petitioner said it is his mother Zipporah who Petitioned for Letters of Administration and may have signed for the deceased children. He said it is his mother who sold land to Genesio but he was not the deceased person's son.

10. I have also considered the evidence of Peter Mwenda M'Mureithi – Petitioner's 2nd witness who confirms that Zipporah used a letter from Chief identifying the names of Evangeline's children except for Ibrahim as beneficiaries to the estate of the deceased. He said that Rebecca was not given share of estate and that Zipporah's daughters were also not given land.

11. PW2 confirmed that the deceased gave his 3 son's land and the 4th portion remained in his name. he said Genesio was given land because the deceased said so as he paid money for his treatment and even bought his coffin for burial. PW2 however, said there was no agreement to the effect Genesio was to be given land and the children of the deceased didn't give consent for purchase.

12. Jeremiah Kamakia also testified and said that Evangeline was not wife of the deceased. He used Evangeline who is older than him had an affair with the deceased and sired 2 children. He said he didn't know Monica and Kagwiria. He also said he didn't know Ibrahim. He said that deceased person's daughters were not given land. PW3 had no objection if Evangeline's children are given land.

13. From the trial evidence of the parties herein, it comes out clearly that the deceased sired children with Evangeline Kathuku and if the deceased died on 19.1.1998 and Petitioner confirms he sired 4 children with Evangeline while she was away from his Muthithu home and that Evangeline's last born son Ibrahim was born in 1982 or 1983 or thereabouts then it can be safely concluded that he was also the father of the said Ibrahim.

14. The Petitioner's witnesses alleged Evangeline Kathuku got married to 2 other men but they didn't substantiate. They made mere allegations.

15. The applicants have also proved to this court that the 1st Petitioner now deceased – Zipporah Kathambi had included the 4 names of Evangeline's children and omitted the one for Ibrahim without explanation. It was also the evidence of applicants which was confirmed by the Petitioner that although 2 of Zipporah's children died in childhood long before the deceased died, their names were included in the petition and it was purported that they signed consent to the making of grant and mode of distribution and yet they were already deceased.

16. This court finds that an act of fraud on the part of the Zipporah Kathambi which is a ground upon which this grant will be revoked. Further the said Zipporah Kathambi when applying for confirmation of grant did not distribute the estate to the beneficiaries she had listed and yet there was no affidavit confirm of the said beneficiaries had denounced their rights to the estate.

17. It was confirmed that Genesio Mwenda who benefitted from the estate of the deceased – given 1.50 acres was a stranger to the estate and was therefore not entitled to a share of the same. Claims that he paid for the treatment of the deceased were not proved. Even the current petitioner could not explain circumstances under which he got a share of the estate. This court therefore finds that the application dated 29.10.2008 has merit and grant made to Julius Muthaura is revoked and all transactions arising from the said grant are annulled.

18. This court hereby issues fresh grant of letters of Administration to Daniel Munyua and Julius Muthaura Murithi for purposes of fresh distribution of the estate of the deceased to include all the children of the deceased and the surviving widow unless anyone of them denounces their right to inherit. Each party will bear their own costs.

HON A. ONG'INJO

JUDGE

RULING DELIVERED, DATED AND SIGNED IN COURT ON 12TH DAY OF MARCH 2020.

In the presence of :

C/A: Kinoti :-

Ms Miriti holding brief for Ms Mwangi for petitioner.

Mr Nyamu Nyagah for Objector – Mr Murango holding brief.

HON A. ONG'INJO

JUDGE