



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

SUCCESSION CAUSE NO. 3 OF 2011

IN THE MATTER OF THE ESTATE OF LAURENT MURUNGA TSALWA (DECEASED)

SABINA ILAMWENYA MURUNGA PETITIONER

VERSUS

PAUL SHISANYA MURUNGA 1ST OBJECTOR

KIZITO MURUNGA 2ND OBJECTOR

RULING

1. A grant of letters of administration was issued by the court to the petitioner herein on the 9th March, 2011. On 7/7/2011, the objectors herein filed summons for revocation of grant through the law firm of **Elungata & Co. Advocates**. On the 9/2/2017 the court by consent of the parties revoked the earlier grant issued to the petitioner and ordered that a fresh grant be issued jointly to the petitioner and the 1st objector. It was further agreed that the petitioner was to file an application for her preferred mode of distribution of the estate while the objectors were at liberty to file affidavit on their preferred mode of distribution.

2. Subsequently the petitioner did file her preferred mode of distribution of the estate vide an amended affidavit of proposed mode of distribution dated 7th November, 2017. Since then the matter has been adjourned several times to enable the 1st objector to file his preferred mode of distribution to no avail. On 3/2/2020 **Mr. Mango**, advocate for the petitioner requested the court to adopt the mode of distribution proposed by the petitioner.

3. The land in dispute is L. R. No. Kakamega/Shitochi/1356. The petitioner's proposed mode of distribution was supported by her affidavit. She depones in her affidavit that the 1st objector is her biological brother. That the said parcel of land was bequeathed to her by her father while the 1st objector was bequeathed land parcel No. Kakamega/Shitochi/1357. That their late brother Clement Murunga Lihanda was bequeathed land parcel No. Kakamega/Shitochi/1354. That upon taking her parcel of land in 1974 or thereabout the 1st objector secretly sold a portion of the said land to the 2nd objector. That the 1st objector ought to give the 2nd objector land from his land parcel No. Kakamega/Shitochi/1357.

4. The objectors' summons for revocation of grant were supported by the affidavit of the 1st objector. In his affidavit the 1st objector stated that they have two sisters, Benedatte Mukaalo and Anjelina Khatenje. That there is also their sister-in-law, Margaret Matacha who is the wife to their late brother, Clement Murunga. That the petitioner has not mentioned the said people in this succession cause.

5. The petitioner did not respond to the said averments by the 1st Objector. It means that the deceased was survived by the aforementioned people.

6. I have perused the court file. The P&A 5 filed by the petitioner indicates that the deceased herein was only survived by the petitioner. This must have been a lie because the deceased was also survived by the 1st objector, two other daughters and a sister-in-law.

7. Rule 40 (8) of the Probate and Administration Rules requires that before a grant is confirmed that all the dependants or other persons who may be beneficially entitled to consent in writing. There is no such consent filed together with the summons for confirmation of grant. In the premises the application is not properly before the court for lack of consent of other beneficiaries.

8. In view of the above, I decline to adopt the mode of distribution proposed by the petitioner.

Delivered, dated and signed in open court at Kakamega this 12th day of March, 2020.

J. N. NJAGI

JUDGE

In the presence of:

Mr. Shivega holding brief for Mango for Petitioner

Mr. Elungata for Objectors

Petitioner - Absent

1st Objector - Absent

2nd Objector - Absent

Court Assistant - Polycap

30 days right of appeal.