



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KITALE**

**SUCCESSION CAUSE NO. 32 OF 2012**

**IN THE MATTER OF THE ESTATE OF THE LATE EEM.....DECEASED)**

**JKE.....PETITIONER**

**VERSES**

**RNK & 2 OTHERS.....RESPONDENTS**

**AND**

**VY & 4 OTHERS.....OBJECTORS/APPLICANTS**

**RULING**

1. The Applicant V Y on his own behalf and on behalf of the rest of his siblings vide an application dated 26<sup>th</sup> June, 2019 has prayed that the grant issued on the 5<sup>th</sup> day of June, 2017 and confirmed on the 19<sup>th</sup> day of April, 2019 to the Petitioner herein be revoked; that this court be pleased to review and or set aside the order dated 11<sup>th</sup> June, 2019 in respect to Land parcel No. KAPLAMAI /KACHIBORA [particulars withheld] which belonged to the 2<sup>nd</sup> Objector.

2. The Applicant's contents in his supporting affidavit that he and the rest of the beneficiaries did not authorise the Petitioner to act on their behalf and that as a matter of fact their two sisters were left behind. They accused the Petitioner who is their last born of mismanaging and wasting the estate.

3. The Applicant has enumerated other ills which the Petitioner has done including wasting the Estates assets left behind by the deceased. They also accuse him of not disclosing to the court that their brother E Y was suffering from some mental decease. He deponed that his wife was injuncted from utilising the land parcel number KAPLAMAI /KACHIBORA [particulars withheld] vide the ruling of this court dated 11<sup>th</sup> June, 2019.

4. The Respondent has filed a replying affidavit dated 1<sup>st</sup> October, 2019 in which he has acknowledge part of the issues raised by the Applicant.

5. The court without wasting a lot of judicial time states that there is nothing lost to the Applicants. The grant issued and confirmed on the 19<sup>th</sup> day of April, 2018 was done in their presence as per the court record. They agreed that the petitioner "***do hold the same in trust***". The implication is that until they made up their minds on how they intend to distribute the estate, the petitioner shall be their trustee.

6. For them to turn around yet they were present in court on the material day smacks bad faith on their part. If their sisters were left behind, it was within their knowledge and it was their duty to notify the court.

7. All in all, this court does not see any prejudice they have suffered as there is no tangible material presented to this court indicating any impropriety on the part of the Administrator. The proper recourse for the Petitioner is to have the estate distributed so that the burden can get out of his back. The law does not preclude the Applicants from applying to be join Administrators if need be.

8. Peradventure the Petitioner is removed, who shall administer the estate? This is an issue which they have not ventured into and this court to the extent that there is no impropriety on the part of the Administrator who is actually their trustee see no reason to remove him.

9. Nonetheless in order for the court to ensure that the estate is distributed and the burden of the petitioner lifted he is hereby ordered to apply for the distribution of the estate within the next **45 days** from the date herein. This in my view shall sort out the entitlement of every individual and beneficiary to the estate.

10. On the issue of setting aside the injunction issued on 11<sup>th</sup> June, 2019, this court in that ruling found that the land in question did not form part of the deceased estate and it should therefore be dealt with independently. The estate of the late **KL** should be able to be conducted independent of this proceedings.

11. It is also noted that the Applicant herein was not a party to that particular injunction application. If the 2<sup>nd</sup> Respondent was involved, then he should file a separate application for consideration by this court.

12. In a nutshell, the application is allowed only to the extent that let the estate be distributed as advised above. This will clearly bring out the issues bedevilling the family and will most certainly ensure that each beneficiary gets his share without burdening the petitioner.

13. Being a family matter each party shall meet its own costs.

14. Orders accordingly.

**Dated, signed and delivered in open court at Kitale this 10th day of March, 2020.**

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**H. K. CHEMITEI**

**JUDGE**

**10/03/2020**

**In the presence of:-**

**Wanyonyi for the Objector**

**Bungei for the Petitioner**

**Court Assistant – Silvia**

**Ruling read in open court**