



**REPUBLIC OF KENYA.**

**IN THE HIGH COURT OF KENYA**

**AT BUNGOMA.**

**P & A. CAUSE NO. 93 OF 2003**

**IN THE MATTER OF THE ESTATE OF THE LATE MICHAEL MANGWANA NAMATSI...DECEASED**

**AND**

**SUSAN AKHULUNYA MANGWANA.....PETITIONER**

**VERSUS**

**JUDITH MANGWANA**

**JACKLINE MAVIA MANGWANA**

**JERETINA NAWINYI**

**RUTH APONYO MANGWANA**

**VIVIAN MANGWANA.....BENEFICIARIES/APPLICANTS**

**RULING**

Michael Makhwana Namatsi the deceased died on 22.10.1993. He left as his estate Bungoma/Kiminini/67 measuring 122.5 Haces. He had 3 wives Susan Akhulunya (1<sup>st</sup> Widow) (2) Elizabeth Isisiche (2<sup>nd</sup> Widow) (3) Sarah Magwana (3<sup>rd</sup> Widow). All the widows had children.

Susan Akhulunya Mangwana filed this Petition for Letters of Administration. The other widows filed objection to the issue of the grant. The grant was issued to Susan. By application dated 20.4.2010 she filed summons for confirmation and attached the proposed mode of distribution. A certificate of confirmation was issued by Muchelule – J dated 4<sup>th</sup> November 2011 which was awarded and confirmed on 22.2.2012. By application dated 8.5.2016, Elizabeth Tsiichicha Mangwana and Sarah Akinyi Mangwana applied for orders;

- i. THAT** there be revocation of grant issued to SUSAN WAKHULUNYA on 22/2/2012 as well as any other earlier grant hereto.
- ii. THAT** buyers of the suit land from the time of 1<sup>st</sup> grant on 22/9/2011 as well as their registration be revoked.
- iii. THAT** there be fresh distribution of the deceased's estate to accommodate the interest of the applicants as 2<sup>nd</sup> and 3<sup>rd</sup> widows hereto respectively.
- iv. THAT** the administrator Respondent hereby in the alternative be mandated to give account to the distribution and administration of the state to date from time of obtaining the confirmed grant.
- v. THAT** there be any other order as may be deemed fit by the court

The application was canvassed and by ruling date 3<sup>rd</sup> November, 2016, Aroni – J ruled.

**(6) The parties agreed that the grant confirmed on the 22<sup>nd</sup> February, 2012 was the one applicable for purposes of distribution. The same has not been revoked or amended safe for corrections made to the shares of Francis Mudibo Wamalwa and Peter Ongaya Ayub. I therefore reiterate that the same is what would be used for distribution of the estate.**

**(7) Consequently, the 2<sup>nd</sup> & 3<sup>rd</sup> widows being the applicants herein are hereby made co-administrators with the 1<sup>st</sup> widow to oversee distribution of the estate of the strict compliance with the grant.**

Aroni - J issued Certificate of Rectification of grant on 20.11.2017 where the Administrators were all the widows of the deceased.

By Summons dated 22.6.2017 Judith Mangwana, Jackline Mavia Mangwana, Jeretina Nawinyi, Ruth Aponyo Mangwana and Vivian Mangwana applied to this court for orders;

**1. THAT** this Honourable court be pleased to Revoke or annul the certificate of confirmation of grant issued to the Petitioner herein on the 22/2/2012.

**2. THAT** there be fresh distribution of the estate of the deceased in which the Applicants be included as beneficiaries.

**3. THAT** there be a fresh distribution of the estate of the deceased to take in to account the property disposed by the Petitioner (Susan Wakhulunya Mangwana) which amounts to 31 acres of land.

The grounds for the application is that they are beneficiaries of the estate but have been left out in the distribution. They depone that they are children of the widows of the deceased as hereunder;

**1<sup>st</sup> House:** None

**2<sup>nd</sup> House:** (1) Jackline Mavia

(2) Jeretina Nawinyi

**3<sup>rd</sup> House:** (1) Vivian Mangwana

(2) Ruth Aponyo

Applicants contention is that the distribution according to the widows was unfair and that the estate should have been distributed among 13 children and 3 widows making a total of 16 units, who should have shared equally.

The 1<sup>st</sup> widow Susan Akhulunya Mangwana also filed application dated 24.10.2017 seeking orders;

1. That the Deputy Registrar of this Honourable court be authorized to sign all the relevant documents pertaining to registration and transfer of land by way of transmission of land by personal representative to all person(s) entitled under the will or an intestacy pursuant to the Amended grant dated the 22<sup>nd</sup> February 2012 and the Ruling of this court dated 3<sup>rd</sup> November 2016 in place of the 2<sup>nd</sup> and 3<sup>rd</sup> petitioners/respondents who have refused to do so.

2. That each beneficiary and or liability in the deceased's estate be ordered to pay the costs of registration and transfer of his/her respective portion of land.

3. That the costs of this application be paid by the 2<sup>nd</sup> and 3<sup>rd</sup> petitioners/respondents.

4. That this honourable court to make any other relevant orders it deems fit and just to grant.

The main grounds for the application is that this court appointed the 3 widows as co-administrators and that Elizabeth Tsische 2<sup>nd</sup> Widow and Sarah Akinyi (3<sup>rd</sup>) Widow have failed to sign the necessary documents to effect the distribution as per the grant.

By consent both application were to be heard together. The counsel for the parties have filed respective written submissions which I have considered. There is no doubt that a similar application as this application 22.6.2019 was made by Elizabeth Tsische Mangwana and Sarah Akinyi. The applicants in this application Jackline Mavia and Jeretina Nawinyi are children of Elizabeth, and Vivian Mangwana and Ruth Aponyo are children of Sarah Akinyi. The previous application dated 8.5.2016 was filed by the mothers and the present one by the children. This is therefore the same issue but by children of the previous applicants for which Aroni - J by ruling dated 3.11.2016 ruled;

**(6) The parties agreed that the grant confirmed on the 22<sup>nd</sup> February, 2012 was the one applicable for purposes of distribution. The same has not been revoked or amended save for corrections made to the shares of Francis Mudibo Wamalwa and Peter Ongaya Ayub. I therefore reiterate that the same is what would be used for distribution of the estate.**

**(7) Consequently, the 2<sup>nd</sup> & 3<sup>rd</sup> widows being the applicants herein are hereby made co-administrators with the 1<sup>st</sup> widow to oversee distribution of the estate of the strict compliance with the grant.**

The applicants contention is that they were left out of the distribution. From the distribution, the shares were allocated to the Respective houses/widows who would distribute to their children. The application are therefore to get shares from the shares allocated to their respective mothers/houses.

This application being on same issues by applicants which issue were litigated by their mothers and ruling made by Aroni - J makes this application res judicature. The application dated 22.6.2017 is hereby dismissed.

On the application by Susan dated 24.10.2017, there is no dispute that all the 3 widows of the deceased were made Co-administrators of the estate by Aroni - J and Certificate of Rectification of grant issued on 20.11.2017. The 3 administrators were to proceed and effect distribution to the beneficiaries in accordance with the schedule. This includes signing all the necessary documentation to effect the distribution and transfer of shares Susan submits the 2 others Elizabeth Tsische and Sarah Akinyi have refused and/or neglected to sign the necessary documents. They cannot be allowed to hold the process hostage. This court directs are the Petitioners;

1. Susan Akhulunya Mangwana
2. Elizabeth Tsische Mangwana
3. Sarah Akinyi Mangwana

to jointly sign the documents within 30 days from date of this ruling. In the event they are unable to comply as directed, Any one Petitioner willing to sign, is authorized by this court to sign the necessary document.

Each party to bear their own costs.

**Dated at Bungoma this 10<sup>th</sup> day of March,2020.**

**S.N. RIECHI**

**JUDGE**