



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

SUCCESSION CAUSE NO. 503 OF 2014

**IN THE MATTER OF THE ESTATE OF TOM MASIACHE MURUNGA alias TOM JAPHETH MASACHE MURUNGA
(DECEASED)**

RULING

1. The application that I am tasked with determining is a summons for revocation of grant dated 8th June 2015.
2. The matter is fairly straightforward. The administratrix, Irene Mangeni Murungu, when she sought representation to the estate of the deceased, disclosed only herself and her children. In the application before me, the applicant, Wanyona H. Murunga, says the administratrix did not disclose all the survivors of the deceased, nor all the assets of the estate. She discloses that the deceased had actually married three times. She was the third wife, while the administratrix was the second wife. She avers that she and her children were not disclosed in the petition.
3. The administratrix has conceded, in her reply to the application, that the deceased had married three times, and had children with the third wife. She concedes that she did not disclose the third wife and her children in her petition, and that some of the assets were not disclosed. She, however, argues that the non-disclosure was not deliberate nor fraudulent, for she thought each widow of the deceased was to seek representation with respect to the assets that are in her possession.
4. There should be only one succession cause in respect of the intestate estate of one deceased person, regardless of the number of wives that he had and who had possession of which assets of the estate. That one cause should disclose all the widows of the deceased, all his children, whether born within or outside wedlock, and all the assets that he died possessed of.
5. That being the case, there is a case for intervention in the matter to bring the applicant and her children on board in this cause. It is only democratic in polygamous situations that all the houses of the deceased person be represented in the administration of the estate. One of the wives of the deceased has since died, and she had no children, therefore, administration in this cause should be committed to the two surviving spouses, the administratrix and the applicant. Thereafter, they should move quickly to have their grant confirmed, where all the other issues relating to the estate shall be dealt with, such as the taking of accounts, ascertainment of the assets of the deceased, among other issues, in complete compliance with section 71 of the Law of Succession Act.
6. The final orders that I feel constrained to make are as follows:
 - a. That the grant made herein to Irene Mangeni Murungu on 25th September 2014 is hereby revoked;
 - b. That I appoint Irene Mangeni Murungu and Wanyona Heny Murungu, the new administratrices of the estate of the deceased, and direct that a grant of letters of administration intestate be made to them;
 - c. That the administratrices shall, upon the grant being issued to them, move with dispatch, either jointly or severally, to file for confirmation of their grant, which application shall be made, at any rate, within forty-five days of the issuance of the grant to them;
 - d. That any person who shall be unhappy with the proposals on distribution to be made in that application shall be at liberty to file an affidavit of protest making their own proposals;
 - e. That the matter shall be mentioned thereafter for compliance and directions;
 - f. That each party shall bear their costs; and
 - g. That any party aggrieved with the orders made herein shall be at liberty to move the Court of Appeal appropriately, within twenty-eight days.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT KAKAMEGA THIS 30TH DAY OF APRIL, 2020

W. MUSYOKA

JUDGE

ORDER

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic, and in light of the directions issued by His Lordship, the Chief Justice, on 15th March 2020, this ruling/judgment has been delivered to the parties online with their consent. They have waived compliance with Order 21 rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court has been guided by Article 159 (2) (d) of the Constitution which requires the court to eschew technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the Constitution and the provisions of Section 18 of the Civil Procedure Act, Cap 21, Laws of Kenya, which impose on this court the duty to use, inter alia, suitable technology to enhance the overriding objective, which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

W. MUSYOKA

JUDGE