



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

SUCCESSION CAUSE NO 279 OF 2013

IN THE MATTER OF THE ESTATE OF THE LATE MUKINDIA MWIREBUA(DECEASED)

JOHN NTEERE MWARANIA.....PETITIONER

VERSUS

SUSAN MARETE.....OBJECTOR

TABITHA KATHURE MUKINDIA...APPLICANT

RULING

1. Tabitha Kathure Mukindia the applicant in application dated 5th February 2020, sought for orders of revocation and/or annulment of grant that was made to John Mutere M'Mwarania and confirmed on 22nd November 2018. The application was based on the ground that she was the daughter of the deceased and that she had been left out of the distribution of the estate of her father.
2. She averred in her affidavit in support of the application that she was entitled to an equal share as her siblings and that she had not denounced her right as a beneficiary.
3. The applicant also filed an application dated 11 August 2020 seeking for temporary stay of execution of the grant herein pending the hearing and determination of the application for revocation.
4. In response to the application John Nteere M'Mwarania filed a replying affidavit sworn on 24th August 2020 and averred that the applicants applications were an after thought and were not merited and therefore an abuse of the court. He claimed that the applicant was aware when this cause was filed in 2013 and he acknowledged that the deceased in his will did not provide for the applicant. He therefore urged the court not to stop the process of the implementation of the grant and dismiss the application.
5. Susan Marete also filed a Replying affidavit, asking the court to dismiss the application for reasons that the Will written by the deceased was found to be valid and the same had not been set aside.
6. In consideration of the submissions by counsel, it is apparent that although the Chief of Ntakira Location listed Tabitha kathure Mukindia as a beneficiary, the will drawn by the deceased on 1st December 2003 did not include her or provide for her as a beneficiary. Although the applicant did not bring her application under Section 26 of the Law of Succession Act, this court finds that her concerns are valid as she seeks that this court provides for her in the deceased persons estate. It will not be necessary and it will be a waste of time and resources to have the grant herein revoked in order for the parties to start the process of determining what the applicant should be provided for a fresh. In that regard, this court finds that since the deceased had decided to provide for his children in equal measure, the applicant herein will be added in the list of beneficiaries in the Will and to get a share in all the assets where the other beneficiaries are benefiting as follows :-

7. a) Ntima/Ntakira/ 483

Francis Kamathi 1 acre

John Nteere 1 acre

Simon Murithi 1 acre

Isabella Gacheri – 0.32 acres

Karuru Mukindia 0.50 acres

Purity Makandi 1 acre

Tabitha Kathure Mukindia 0.50 acres

b) Meru Central Farmers cooperative union

Francis Kamathi

John Nteere

Simon Muriithi

Isabella Gacheri

Karuru Mukindia

Purity Makandi

Tabitha Kathure Mukindia to share equally

c) Money In Post Bank to John Nteere in whole

d) MiruaMeru Farm cooperative Society to be shared equally

Francis Kamathi

John Nteere

Simon Muriithi

Isabella Gacheri

Karuru Mukindia

Purity Makandi

Tabitha Kathure Mukindia

e) MIRIGA MIERU LANDLESS COOP SHARES

To be shared equally by

Francis Kamathi

John Nteere

Simon Muriithi

Isabella Gacheri

Karuru Mukindia

Purity Makandi

Tabitha Kathure Mukindia

d) Household goods and Domestic Animals.

Francis Kamathi

John Nteere

Simon Muriithi

Isabella Gacheri

Karuru Mukindia

Purity Makandi

8. Certificate of Confirmation dated on 22nd November 2018 to be issued in the above reviewed terms.

9. The Applicants application dated 5th February 2020 is therefore allowed in part. The application dated 11th August 2020 is overtaken by events and the same is struck out. Costs of both application be borne by the parties on their own.

HON.ANNE ADWERA ONG'INJO

JUDGE

RULING DATED AND DELIVERED AT MERU ON THIS 24th DAY OF SEPTEMBER 2020.

HON.ANNE ADWERA ONG'INJO

JUDGE

In the presence:-

MS Nyagah Advocate for Objector/1st Respondent

MS Mutunga Mboos Advocate for Petitioner/2nd Respondent - No appearance

MS Kimathi Kiara, Advocate for Applicant- No appearance

HON.ANNE ADWERA ONG'INJO

JUDGE