



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

FAMILY DIVISION

SUCCESSION CAUSE NO. 1761 OF 2015

IN THE MATTER OF THE ESTATE OF FRANCIS PHILIP NGILLA (DECEASED)

BETH MUENI NGILLA.....APPLICANT

VERSUS

MATHEW MWANIKI NGILLA.....RESPONDENT

RULING

1. The deceased Francis Philip Ngilla died intestate on 22nd July 2013. He left two houses. The first house has five children:-

- (a) Priscilla Kamene Ngilla;
- (b) David Mwaniki Ngilla;
- (c) Mathew Mwaniki Ngilla (respondent);
- (d) Joyce Nthenya Ngila; and
- (e) Moses Muthini Ngilla.

The second house has the following members –

- (a) Beth Mueni Ngilla (widow/applicant);
- (b) Amos Mwanzia Ngilla; and
- (c) Tito Musyoka Ngilla.

2. The applicant filed this chamber application on 2nd November 2016 seeking the extension of time to file a notice of objection to the petition for grant of letters of administration that the respondents filed on 15th July 2015. In the meantime, she requested that no grant of representation should be made. Her case was that the petition was filed and gazetted on 19th August 2016 but she had no knowledge of the same. She had not provided consent to the filing of the petition. She is opposed to the respondent being granted letters. She accuses him of intermeddling in the estate.

3. From the record, there is a joint grant issued to the respondent and the applicant on 22nd September 2016. What had happened was that the respondent had filed the petition, indicating that he was doing this jointly with the applicant. It is obvious that she had not consented to the petition. There are documents showing that a citation issued. The respondent claims that this was served on her. She denied the claim. She did not participate in the obtaining of the grant.

4. To the extent that there is a grant, the applicant's application has been overtaken by events.

5. The court could very well proceed on the basis that the grant was fraudulently obtained and revoke the same. But that will take this cause

back to the beginning. It will cause delay and costs to both parties. Substantially, both the respondent and the applicant are beneficiaries of the estate of the deceased. Each represents one of the houses of the deceased. In such a polygamous arrangement, the practice is to pick a beneficiary from each house and issue them a joint grant to hold until the grant is confirmed. In material terms, the applicant is seeking her share and that of her children from the estate of the deceased.

6. I see from the file that the respondent did on 21st May 2018 file an application for the confirmation of the grant. He did not consult the applicant. In the supporting affidavit he has listed the deceased's estate. He has shown who the beneficiaries are. He, however, has not proposed distribution.

7. In the wider interests of justice, and so that this matter should not delay, I allow the applicant 30 days to swear and serve to each beneficiary an affidavit in response to the application for confirmation that is on record. Let her indicate who the beneficiaries are, what property the deceased left and how she would like the property to be shared to the beneficiaries. Upon service, the respondent and each beneficiary will within 14 days file and serve an affidavit proposing his/her preferred mode of distribution.

8. The matter shall be mentioned on 4th March 2019 for directions on the manner of disposal.

9. In those terms, the application by the applicant is allowed with costs.

DATED and DELIVERED at NAIROBI this 31ST day of JANUARY 2019.

A.O. MUCHELULE

JUDGE