



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

SUCCESSION CASE NO. 108 OF 2010

IN THE MATTER OF THE ESTATE OF M'KWIRIGA M'KWARIA

BENARD MUTEGI KWIRIGA.....PETITIONER

VERSUS

CHARITY KATHAMBI KWIRIGA

PATRICK GITUMA KWIRIGA

DOUGLAS MURITHI.....APPLICANTS

JUDGEMENT

By a letter dated 12th October 2009 the Chief Igoki Location introduced the children and windows of the deceased as follows:-

1. Josephine Gaiti – Widow
2. Charity Kathambi – Widow
3. Douglas Murithi – Son
4. Bernard Mutegi – Son
5. Rosemary Kaimuju – daughter
6. Jacob Magajiu – son
7. Cecilia Kinanu – daughter
8. Felista Gatwiri – daughter
9. Faith Gacheri – daughter
10. Ireen Kagendo – daughter
11. Catherine Nkirote – daughter
12. Patrick Gituma – son
13. Kenneth Mugambi – son
14. Jameleck Kinyua -son
15. Julius Mwobobia – Purchaser
16. Mutuemer Bernard – Purchaser

The deceased died on 5th September 1999 while domiciled in Mwichiune within Meru County.

Assets listed as registered in the name of the deceased that fall for distribution are

1. L.R.Abogeta/L.Chure/767

2. L.R. Abogeta/L.Chure/768

Grant of Letters of Administration was made to Bernard Mutegi Kwirigi and Charity Kathambi M'Arimi on 21st April 2011 and application for confirmation and distribution dated 23rd March was filed. The grant was confirmed on 28th February 2012 by Hon J. A. Makau in absence of objector/but in presence of all beneficiaries whose names appear on record.

By summons dated 29th May 2012 the 1st Administrator was authorized to execute documents for transmission of the estate as 2nd Administratrix had not cooperated.

By an application dated 16th July 2013 Charity Kathambi, Patrick Gituma and Douglas Murithi sought that grant be revoked and sub divisions resulting from estate properties LR Abogeta/L.Chure/767 & 768 be inhibited for reasons grant was confirmed without their knowledge and that the estate was being transferred to 3rd parties to the detriment of the rightful beneficiaries who will suffer irreparable loss and damage if the intermeddling continues. The application is supported by the affidavit of charity Kathambi sworn on 16.7.2013.

Directions were taken that application for revocation be canvassed by way of viva voce evidence and statement were ordered to be filed. Patrick Gituma testified on behalf of the applicants.

Bernard Mutegi testified that the deceased had 2 parcels of Land LR Nos. 767 and 768. That LR 768 was subdivided into LR 1485,1486, 1487 and 1488 and registered in his name as Administrator. He said the delay to transfer the parcels was caused by the application herein. He said 1st applicant was involved in the process of confirmation of grant and distribution of estate but didn't attend court. He said he had not refused to give anyone land.

In consideration of the evidence of the 2nd applicant and the Respondent and in consideration of the submissions filed herein, this court is of considered opinion that the applicants have not sufficiently proved why the grant made to Respondent and 1st applicant should be revoked.

The person referred to as a stranger in the estate Julius Mwobobia who is to get 0.33 acres from the estate is confirmed by the 2nd applicant to be entitled to that portion as a result of an order of Land Disputes Tribunal. The Respondent had sought the courts intervention to expedite the execution of courts order in distributing the estate when 1st applicant became uncooperative and the signature of 1st applicant was dispensed with. The failure by 1st applicant to come to court and prosecute her application can only be taken to mean that she is abusing due process of the law to further delay distribution of the estate.

The application is dismissed with costs.

HON. A.ONG'INJO

JUDGE

RULING SIGNED, DELIVERED AND DATED THIS 31ST DAY OF

JANUARY 2019.

In the presence of:

C/A: Kinoti

Petitioner:- Mr Kithinji holding brief for Mutegi for Petitioner

Applicants: Ms Wanjohi Advocate for Objectors.

HON. A.ONG'INJO

JUDGE