



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

SUCCESSION CAUSE NO. 344 OF 2005

In The Matter of the Estate of Julius Muthamia Kanampiu (Deceased)

JERUSHA NKOROI MUTHAMIA.....PETITIONER

Versus

LUCY KINYA M'EUTHANIA.....OBJECTOR

JUDGMENT

[1] **JULIUS MUTHAMIA KANAPIU** (“the deceased) to whom this Succession Cause relates died on 9th November 1999. The chief’s letter of introduction stated that the deceased is survived by one wife and five children. According to the petition documents his assets comprise of *Njia/Liburu 362, Njia/Kiburutea Scheme/443, Kieogoi Kinyanka 771, Kani Ka Rui Market Plot No. 6 ‘B’ Nyambene and Kangeta Land Adjudication Unit No. 5582.*

[2] The petitioner petitioned for the grant of letters of administration intestate which were issued to her on 2nd November 2007 and confirmed on 10th December 2008.

[3] Summons for Revocation of grant dated 7th October 2009 were filed seeking revocation or annulment of the grant herein under **Section 76 and Rule 44 of the Probate and Administration Rules CAP 160 Laws of Kenya**. The grounds cited for revocation were:-

1. That she was neither consulted nor provided for in the estate despite being a wife of the deceased. Therefore, the grant disinherited her and her children completely.

2. That she lives on. Kangeta Land Adjudication Unit No. 5582 with the children of the deceased.

3. That there was an understanding that the petitioner would take the rest of the deceased’s property except land parcel No. 5582 which occupies.

4. That the deceased was survived by the following dependants:

First House

1. Jerusha Gitonga Muthamia - Wife

2. John Mwenda Muthamia - Son

3. Judy Koolo - Daughter

4. Charles Kaunda - Son

5. Misheck Kirimi - Son

Second House

1. Lucy Kinya M’Ebuthamia - Wife

2. Purity Mwendwa - Daughter

3. Caroline Mukami - Daughter

4. Cyprian Muturia - Son

5. The petitioner opposed the application through her replying affidavit sworn on 6th March 2017. She stated that the applicant and her children are total strangers to the estate for the deceased only had only one homestead. She also stated denied that the Applicant is in possession of any the deceased's pieces of land. It was her claim that, after the deceased's burial she was informed by the chairman of the deceased's clan that there was somebody claiming to have been married by the deceased. She attended the meeting of which the elders heard and dismissed the applicant's claim.

ANALYSIS AND DETERMINATION

6. The court is being asked to revoke the grant herein. Has the Applicant met the bill so as to enable the court revoke the grant of letters of administration intestate which were made on 2nd November 2007 and confirmed on 10th December 2008?

7. **Section 76 of the Law of Succession Act** sets out the grounds upon which the court will revoke or annul a grant. The objector claims that the petitioner concealed material facts, to wit; that, she was the wife of the deceased. Again, she claimed that neither was her consent obtained nor made aware of the proceedings.

8. Objector's witnesses namely, Ntonja Maburu and Zakaria M'Inya chairman and secretary of the Athimba Clan respectively, stated in their written statements that the objector came to complain to them that she was being chased away from P/No. 5582 by the petitioner and her children. When the clan listened to both parties it was established that the objector was the 2nd wife of the deceased and had two children. The father of the deceased Joseph M'ethangatha agreed that the objector was a 2nd wife of his deceased son as dowry was paid. He wrote a letter to DLASO of which he gave a copy to the clan agreeing to transfer the subject land to the objector and her children.

9. According to the petitioner's witnesses, Bernard Thurairia M'Mwirichia Chief of Mukululu location stated that he has never received any complaint from any other woman claiming to be married to the deceased. Furthermore, no meeting has been held in his location over the allegations by the objector.

10. Stephen Kabira M'Ikiao stated that the deceased was a son of his father's brother. He affirmed that the deceased had only one wife. He heard of the objector when he was informed by the petitioner that she had been summoned by clan elders. He accompanied the petitioner to the meeting where the objector's claim was dismissed. That the deceased owned the plot at Kangeta which he had not developed.

11. The only point of convergence in the evidence from both sides is that there was a clan meeting held to establish whether the objector is a wife of the deceased. But, the chief denied ever hearing of any complaint or a meeting being held with regard to this matter. This casts doubt upon the authenticity of his evidence taking into account the petitioner herself and her witnesses acknowledged that there was a meeting in which the subject of controversy was resolved. It is unbecoming for a person in his position to lie to this court. This is a breach of code of office as well as Chapter six of the Constitution on integrity and leadership.

12. It is bewildering that people who claim to have attended the same meeting would give quite contra positions on the decision of the meeting. Of course, one of the parties must be lying. Who is that party?

13. The petitioner claims that the clan dismissed the objector's claim. The chairman and secretary of the clan averred otherwise. They proclaimed that the clan came to the conclusion that the objector is a 2nd wife of the deceased and that they had two children. Without doubt, the account provided by objector on the decision by the clan is true reflection of the decision of the meeting. I have not seen or been shown anything which may make me doubt the evidence by the two witnesses as well as that of the father of the deceased that the objector was the wife of the deceased. I so find and hold.

14. That being the case, the petitioner when filing these proceedings needed the consent of the objector in lodging or at least notify her of these proceedings. See **Rule 26 of the Probate and Administration Rules**. Perusal of Form 38 filed by the petitioner reveals that she did not seek consent of the objector as well as her two children. Nothing shows she informed them of the proceedings too.

15. For those reasons, this grant is a candidate for revocation. Accordingly:

a) The grant of letters of administration intestate which were made to Jerusha Nkoroi Muthamia on 2nd November 2007 and confirmed on 10th December 2008 is revoked

b) A fresh grant of letters of administration intestate is made to Jerusha Nkoroi Muthamia jointly with Lucy Kinya M'Ebuthania

c) The Objector shall file and serve a Summons for Confirmation of Grant with detailed affidavit on proposed mode of distribution within the next 30 days which failing the petitioner shall file within 14 days of the default.

d) Upon service in (c) above, the party served with the Summons for Confirmation of Grant shall file and serve a detailed affidavit on the mode of distribution of the estate of the deceased within 14 days thereof.

e) Each party shall bear own costs.

Dated, signed and delivered in open court at Meru this 28th Day of February, 2019

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F.GIKONYO

JUDGE

IN PRESENCE OF

Gitonga for petitioner and interested party

Petitioner – present

Objector – present

Meenya and Kirima for objector – absent

Interested party – present

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F.GIKONYO

JUDGE