



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MURANG'A

SUCCESSION CAUSE NO 122 OF 2015

IN THE MATTER OF THE ESTATE OF CEPHAS KIHANYA NATHAN

(Alias PETER KEFA KIHANYA), DECEASED

RUTH (aka JACINTA) WANJIRU.....APPLICANT

VERSUS

IRENE WANJIRU KIHANYA.....ADMINISTRATOR/RESPONDENT

J U D G M E N T

1. This ruling concerns the **summons dated 29/10/2015** for revocation of grant of letters of administration intestate made on 27th July 2015 and issued to the Administrator **IRENE WANJIRU KIHANYA** on the same date. The application is by **RUTH (aka JACINTA) WANJIRU** (Applicant) and is premised upon the following grounds appearing on the face thereof –

- (a) That the Administrator failed to disclose to court a material fact, to wit, that the Deceased was a polygamist with two wives – the Applicant (also known JACINTA WANJIRU) and the Administrator.
- (b) That the Administrator omitted the Applicant (“and other children of the Deceased”) from the list of the Deceased’s survivors/beneficiaries.
- (c) That the Administrator neither gave notice to nor sought the consent of, the Applicant when seeking the grant.
- (d) That the grant issued to the Administrator was obtained fraudulently, by making statements and without full disclosure of material facts.
- (e) That it is in the interests of justice that the grant be revoked.

2. There is an affidavit sworn by the Applicant in support of the summons. She has deponed, *inter alia* -

- (a) That she got married to the Deceased on or about 4th September, 1959 under Customary Law.
- (b) That she had 5 children with the Deceased as follows -
 - (i) John Bosco Ngonjo - deceased
 - (ii) Jane Wanjiku Muchene - adult
 - (iii) Stephen Ngonjo Kihanya - missing
 - (iv) Stephen Ndirangu Kihanya - adult
 - (v) Rosemary Njeri Kihanya - adult

She has also highlighted in the affidavit the other grounds for the application.

3. The Administrator has opposed the summons for revocation by her long replying affidavit sworn on 22nd and filed on 27th January, 2016. In that affidavit, although she admits that the Applicant was once married to the Deceased as his first wife and had three children with him, she depones that they later divorced vide ***Thika RM Divorce Cause No 7 of 1982*** and annexed a copy of the certificate making decree *nisi absolute* dated 22nd July 1983.
4. The Administrator has also stated that the Deceased's known children with the Applicant will be considered beneficiaries at the time of confirmation of grant.
5. The Administrator swore a further replying affidavit on 26th February, 2016 and filed on 29th February, 2016. To it she annexed further evidence of the divorce between the Deceased and the Applicant; likewise, by a 2nd further replying affidavit sworn on 2nd September, and filed on 2nd December, 2016.
6. The Applicant did not file any supplementary affidavit in answer to the Administrator's averments regarding divorce between the Deceased and the Applicant.
7. The summons for revocation of grant was canvassed by way of written submissions. I have considered the submissions of the parties. There has been some delay in preparation of this ruling which was occasioned by my rather abrupt transfer from Murang'a to Nanyuki where I found two election petition appeals waiting to be heard and disposed of within strict timelines. The delay is regretted.
8. From the material now before the court I am satisfied of the following facts on a balance of probabilities -
 - (a) **The Applicant, RUTH (alias JACINTA) WANJIRU was once married to the Deceased as his first wife.**
 - (b) **That marriage was dissolved by a decree of divorce vide *Thika RM Divorce Cause No 7 of 1982*. Decree *absolute for divorce* was issued on 22nd July, 1983.**
 - (c) **At the time of his death the Deceased was thus married only to the Administrator, IRENE WANJIRU KIHANYA.**
9. Being the Deceased's only surviving spouse, the law prefers the Administrator to administer the Deceased's estate, and the grant of letters of administration intestate issued to her was properly issued.
10. As to who are beneficially entitled to the Deceased's estate and their respective shares thereof, those are matters to be canvassed at the stage of confirmation of grant, and I note that a summons for confirmation of grant is indeed pending in these proceedings. Needless to say, all the Deceased's known children by the Administrator and the Applicant must be beneficiaries.
11. In the circumstances I find no merit in the summons dated 29th October, 2015 for revocation of grant. The same is dismissed with no order as to costs. It is so ordered.

DATED, SIGNED AND DELIVERED AT MURANG'A THIS 29TH DAY OF MARCH 2019

H P G WAWERU

JUDGE