



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

FAMILY DIVISION

SUCCESSION CAUSE NO. 886 OF 1989

IN THE MATTER OF THE ESTATE OF WATHEGI WAYO - (DECEASED)

FRANCIS NDUNGU WATHEGI.....1ST APPLICANT

SIMON GITAU WAMBUI.....2ND APPLICANT

VERSUS

THE PUBLIC TRUSTEE.....RESPONDENT

RULING

1. The deceased Wathegi Wayo died intestate on 24th October 1985. The Public Trustee petitioned for the grant of letters of administration intestate which was issued on 17th October 1989, and confirmed on 16th August 1997. The estate was distributed to the beneficiaries. On 19th December 2012 the applicants Francis Ndungu Wathegi and Simon Gitau Wambui filed summons seeking the revocation of the grant and certificate of confirmation. The grounds were that the confirmation was done without their consent and knowledge, and that they had not been provided for in the distribution. The applicants had, however, been involved at the time the petition was filed.
2. There is no dispute that the deceased had four houses, and that the applicants were from the fourth house. Their mother Mary Wambui Wathegi had other children who are Alice Wairimu, Harun Kariuki, Abraham Kamau, Lucy Njeri and Ruth Wanjiru who, together with their mother, were provided for in the distribution.
3. The deceased left land parcels Chania/Mataara/447, Chania Ngorongo/1251 and Plot No. 43, Gituamba. The distribution of Chania/Ngorongo/1251 was done on 5th April 1995 by Justice Githinji (as he then was) and that of Chania/Mataara/ 447 and plot No. 43, Gituamba was done by Justice Kuloba on 30th July 1997.
4. In the replying affidavit by Deputy Public Trustee Mukulu Ngilu Kariuki, who had conduct of the matter, she deponed that the distribution followed various family meetings. In the meetings, an issue was raised that the applicants were not the children of the deceased; that they had been born after the demise of the deceased. Neither the applicants nor their mother contested the claim when it was raised. It was for that reason that the applicants were excluded from benefitting from the estate of the deceased.
5. The applicants did not file any further affidavit to challenge the averments of the Public Trustee. It follows that there was reason why they were not provided for in the estate. The reason was that they were not the children of the deceased.
6. The other complaint by the applicants in seeking revocation was that a stranger, Pauline Nyambura Muritu, had benefitted from the estate. First, now that the applicants have no claim to the estate they cannot decide who should benefit and who should not. Secondly, and more important, Pauline Nyambura Muritu had bought a portion of parcel from the deceased's family which allowed her to be included in the estate's distribution. This was supported by the Public Trustee.
7. In all, I find the applicants' application for revocation not merited. It is dismissed with costs.

DATED and SIGNED at NAIROBI this 22ND day of MAY 2019

A.O. MUCHELULE

JUDGE

DATED and DELIVERED at NAIROBI this 27TH day of MAY 2019

J.N. ONYIEGO

JUDGE