



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KISII

SUCCESSION CAUSE NO. 17 OF 1990

IN THE MATTER OF THE ESTATE OF KERUBO IRANGA (DECEASED)

RAEL MORAA IRANGA.....PETITIONER

-Versus-

SALOME BOSIBORI OMARIBA.....OBJECTOR

RULING

1. **Kerubo Iranga**(hereinafter referred to as the deceased) died on the 7<sup>th</sup> April 1984 at Siamaru Boniamatata/ West Mugirango. On the 20<sup>th</sup> February 1990 **Rael Moraa Girango (hereinafter referred to as Rael)** petitioned for letters of administration intestate. She listed 9 persons as having survived the deceased in her affidavit in support of the petition for letter of administration intestate. The deceased had only one asset **Land parcel no. west Mugirango/ Siamani/830**.

2. A grant of letters of administration intestate was issued to Rael Moraa Girango on the 15<sup>th</sup> June 1990. **Salome Bosibori Omariba(hereinafter referred to as Salome)** lodged an objection and thereafter the matter was referred for arbitration by the D. O Nyamira. Salome claims to be a co-wife of Rael Moraa Iranga and claims half share of the land the subject of this succession cause. The matter was referred to D.O Nyamira for arbitration but no report or award was adopted by the court.

3. The matter was pending for quite some time from 2014. On the 23<sup>rd</sup> of January 2019 Salome Bosibori Omariba filed a Notice of Motion seeking to be allowed to serve Rael Moraa Iranga served by substituted service. On the 28th February 2019 Salome filed an application a Summons for Revocation of Grant (exparte). Salome sought to have the grant issued on the 15/6/1990 revoked and that she be made the sole administrator and that land parcel no. **West Mugirango/Siamani/830** which comprises 3.0Ha be shared equally between Rael Moraa Girango and Salome Bosibori Omariba and registered in their respective names as follows; Rael Moraa Girango 1.5Ha and Salome Bosibori Omariba 1.5Ha. Her reasons for seeking a revocation of the grant are that the grant was obtained through fraud means by concealing the material fact by not disclosing that she had a co-wife who was legally entitled to the share of the estate of the deceased. That further the award from the arbitration has not been filed to date because Rael has not been traced despite all efforts to trace. That she occupies 1.5ha the land to date and the boundaries are fixed from the time immemorial.

4. At the hearing the applicant reiterated what is deponed in her affidavit adding that no one lives in the portion that belongs to Rael. The applicant also called the Chief of their area Philip Mongare Nyamoko. He testified that he knows Rael and Salome. He identified Salome. He recalled that there was a time that Rael was called before the D. C and she did not appear. He told the court that the land belongs to the 2 ladies and that they were co-wives and the land has beacons.

5. Having considered the evidence it is evident that when Rael petitioned for a letters of administration intestate she left out the name of her co-wife the applicant. Salome called their area chief who confirmed that she was the co-wife of Rael. Salome being a widow of the deceased is a beneficiary of the deceased's estate. Section 76 (b) of the Law of Succession Act Cap. 160 provides the court may revoke a grant if **the grant was obtained fraudulently by the making of a false statement or by the concealment from the court of something material**. I find it appropriate that the grant issued on the 15/6/1990 **be revoked**. The said grant dated 15/6/1990 is hereby revoked and a fresh grant shall issue in the name of **Salome Bosibori Omariba**. I would have issued the grant in the names of Rael and Salome but it has been shown that Rael has not been traced. **A fresh grant to issue in the name Salome Bosibori Omariba**. It has been shown too by the applicant that her co-wife has not been around for some time and that her whereabouts are unknown for now and that she is entitled to half of the 3.0Ha the asset left by the deceased. With that in mind the land parcel the subject of this succession cause **West Mugirango/Siamani/830** which measures 3.0Ha shall be registered in the name of the Salome Bosibori Omariba. In the event Rael Moraa Girango resurfaces then Salome shall transfer her half share (1.5Ha) to her. Salome shall not sale or transfer to a third party the half share that belongs to Rael Moraa Girango. No order as to costs.

Dated signed and delivered at Kisii this 20<sup>th</sup> day of June 2019

R.E.OUGO

JUDGE

In the presence;

Mr. Okenye For the applicant

**Respondent Absent**

**Rael      Court clerk**