



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MERU**

**SUCCESSION CAUSE NO. 37 OF 2000**

**IN THE MATTER OF THE ESTATE OF M' IMANENE M' RIMBERIA (DECEASED)**

**BENSON MBOBUA M' IMANENE.....PETITIONER/RESPONDENT**

**VERSUS**

**GERALD MURIUKI.....INTERESTED PARTY/APPLICANT**

**RULING**

1. This Ruling relates to the interested party's application dated 11<sup>th</sup> October 2018 that seeks the revocation and/or annulment of the grant issued to the petitioner herein on 27<sup>th</sup> July 2006. The interested party avers that he was never informed when this matter was being filed. That the petitioner conspired to defraud him of his interest in the estate property i.e. L.r. No. Ntima/Igoki/134. He claims his interest by virtue of being a son of the step brother of the deceased person.

2. The application was opposed by the petitioner vide Replying affidavit dated 21<sup>st</sup> November 2018. He avers that he filed this suit in the year 2000 and informed all family members of the same. That the land Parcel No. Ntima/Igoki/134 was bought by his parents and the land which his father inherited from his grandfather is registered in his stepmother's name. That the applicant herein is a first cousin and as such there is no basis for him challenging the grant that was confirmed.

3. The applicant filed a further affidavit dated 10<sup>th</sup> December 2018 in response to the replying affidavit. He alleged that L.R. No. Ntima/Igoki/134 is ancestral family land registered in the name of the deceased being family trustee of his deceased father viz; M'Muciri M'Ikabu

4. I have also taken the liberty of looking at the proceedings in this cause. The deceased herein died intestate on 15<sup>th</sup> February 1978 leaving behind two wives and six children. The petitioner herein petitioned for letters of administration on 21<sup>st</sup> February 2000 listing himself as the only beneficiary of the deceased. Martha Thirindi M' Manene, one of the wives of the deceased filed objection proceedings stating that the children of the deceased and the other wife of the deceased had not been accounted for. She also alleged that the petition herein was filed secretly. Grant of letters of Administration was subsequently issued to the petitioner on 30<sup>th</sup> June 2000. The petitioner filed summons for confirmation of grant on 29<sup>th</sup> November 2000. The petitioner and Martha Ntirindi M' Manene also filed a consent as to the mode of distribution of the estate on 3<sup>rd</sup> September 2003. The court adopted the consent as an Order of the court on 3<sup>rd</sup> July 2006 and a certificate of confirmation of grant was issued distributing the estate as hereunder;

**1. Wendo water association    L.r. No. Ntima/Igoki/134    to get 400 Sq. ft with**

**assess of 20ft wide x 90 ft long road reserve**

**2. Benson MbobuaM'IManene                    "    )**

**Moses MugambiMbobua                    "    )                    to own jointly**

**Benjamin NgeraMbobua                    "    )**

**3. Martha TirindiM'ImaneneL.r.No. Ntima/Igoki/1932)**

**4. IsackKiumbeM'Imanene                    ") to be registered jointly**

**5. Samuel Mutuma M' IManene                    ")**

## Revocation and/or annulment of Grant

5. The circumstances in which a grant may be revoked or annulled are set out in section 76 of the Law of Succession Act as follows:

**“76 Revocation or annulment of grant a grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by any interested party or of its own motion—**

**a. that the proceedings to obtain the grant were defective in substance;**

**b. that the grant was obtained fraudulently by the making of a false statement or by the concealment from the court of something material to the case;**

**c. that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently;.....”**

6. I must mention that from the onset the petitioner never attached a copy of the title to the parcel in dispute herein i.e. L.r. No. NtimaIgoki/134. The applicant has also not sought to attach relevant documents that established the status of the estate property and specifically with regard to his father viz; M’Muciri M’Ikabu. In **Elijah Gachoki Githinji & another v Stanley Mugo Kariuki & another [2016] eKLR** the court held that the element of trust is a question of fact and it is trite law that whoever alleges must prove. The applicant herein is relying on this fact of concealment in the application for revocation of grant. It is a fact the alleged trust was not registered because no evidence was adduced about the same. This Court is also unable to find that there was implied trust because the applicant has not properly laid basis upon which such a presumption can be deduced.

7. I also agree with the decision made in **Elijah Gachoki (Supra)** that the **Law of Succession Act Cap. 160 Laws of Kenya** really deals with intestate and testamentary succession and administration of estates of deceased persons. The architectural design of the Act is not meant to deal with disputes related to land and in this regard such disputes whether based on trust or contractual obligations should be left to the Environment and Land Court which by law is seized with the jurisdiction and constitutionally mandated to deal with such disputes under **Article 162 (2) of the Constitution**.

8. The Applicant has also alleged that he was not informed when the petitioner herein petitioned for letters of administration. **Rule 7 (7) of the Probate and Administration Rules** provides as follows:-

**Where a person who is not a person in the order of preference set out in section 66 of the Act seeks a grant of administration intestate he shall before the making of the grant furnish to the court such information as the court may require to enable it to exercise its discretion under that section and shall also satisfy the court that every person having a prior preference to a grant by virtue of that section has**

**(a) renounced his right generally to apply for a grant; or**

**(b) consented in writing to the making of grant to the applicant; or**

**(c) been issued with a citation calling upon calling upon him either to renounce such right or to apply for a grant.**

9. With the finding that the applicant has not established the element of trust in these proceedings the same negates his entitlement as a dependant of the estate. The relation between him and the deceased did not mandate the petitioner herein to inform him when petitioning for letters of administration.

10. A look at the table of consanguinity pursuant to **Rule 7 (1) (e) (iii)** at the back of the Law of Succession Act also shows that the first cousins would fall under the fifth degree whereas nephews fall under the 4<sup>th</sup> Degree. The same does not however, in this case make him a person of equal or lesser priority.

11. Having found that the applicant has failed to lay a basis for his application on the element of trust and affirming from the degree of consanguinity/affinity that in this case the applicant is not a person of equal/lesser priority the upshot of this Ruling is that the application herein lacks merit and the same is hereby dismissed.

**HON A. ONG’INJO**

**JUDGE**

**RULING DELIVERED, DATED AND SIGNED THIS 26<sup>TH</sup> DAY OF SEPTEMBER 2019**

**IN THE PRESENCE OF:**

CA: Mr Kinoti.

PETITIONER/RESPONDENT:-Mr Ojiambo Advocate for Petitioner

INTERESTED PARTY/APPLICANT:- Present in person

**HON A. ONG'INJO**

**JUDGE**

**Mr Ojiambo:**

We pray to be supplied with copy of ruling.

**Order:** Petitioner to pay for copy of ruling

**HON A. ONG'INJO**

**JUDGE**