



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

FAMILY DIVISION

SUCCESSION CAUSE NO. 776 OF 2014

IN THE MATTER OF THE ESTATE OF ESTHER WANGUI KAIGUA (DECEASED)

SAMUEL MUNENGE KAIGUA..... APPLICANT

VERSUS

AMINA WANJIRU KAIGUA.....RESPONDENT

RULING

1. The deceased Esther Wangui Kaigua died intestate on 14th January 2013. She was the second wife of the late Kaigua Munenge Murira alias George Kaigua Munenge who died in 1994. She did not bear any child but brought up the following children of her late husband and his first wife who had died before she (the deceased) came into the picture:-

- (a) Sofia Wahu Swale;
- (b) Peter Karitu Kaigua (now deceased);
- (c) Tabitha Wanjiku Kaigua;
- (d) Amina Wanjiku Kaigua (the respondent); and
- (e) Samuel Munenge Kaigua

2. The deceased's estate comprised the following property:-

- (a) Ruiru Mugutha Block 1/T.2658;
- (b) Komothai/Thuita/54
- (c) Juja/Kiaura Block 3/1457;
- (d) Ruiru/Ruiru East Block 2/1460; and
- (e) Juja/Kiaura Block 3/1458.

3. The applicant Samuel Munenge Kaigua stated that he was adopted by the deceased and the late Kaigua in 1992. Following the deceased's death he petitioned this court for grant of letters of administration intestate. He got the grant which was confirmed on 8th June 2015. He inherited the entire estate.

4. On 23rd April 2015 the respondent filed summons to revoke the grant. The grounds were that the applicant had not disclosed to the court that the estate had other dependants; he had misled the court into believing that he was the only beneficiary to the estate; and he had not involved the rest of the family when petitioning for the grant, and distributing the estate. The application was opposed by the applicant. In a judgment delivered on 16th July 2018, the grant was revoked. A fresh grant was issued to the two jointly to await fresh distribution.

5. It is this judgment that aggrieved the applicant. In an application filed on 17th December 2018 he sought the review and/or setting aside of the judgment. His case was that when the late Kaigua died in 1994 he was a minor. He left an estate which, following succession proceedings, was inherited by the respondent and her sisters and brothers. He did not benefit from that estate. The children of the late Kaigua having so benefited, he stated, they were not entitled to benefit from the estate of the deceased. He stated that during the hearing of the application for the revocation of the grant he did not place on record information regarding the estate of the late Kaigua, and that was why the court decided the way it did.

6. The application was opposed by the respondent whose case was that it was at the time of the distribution of the estate that the information referred to by the applicant shall become relevant. Otherwise, he stated, the application was not merited.

7. Mrs. Waiganjo for the applicant Mr. Gachie for the respondent filed written submissions which I have considered.

8. The applicant's application is based on new and additional evidence; that the respondent and her siblings had in the succession proceedings in respect to their late father Kaigua benefitted, and therefore had no claim to the estate of the deceased. This application was brought under **Order 45** of the **Civil Procedure Rules**. It is trite that under **Order 45 rule 1** of the **Civil Procedure Rules** an applicant who discovers new and important evidence is entitled to apply for the review of the ruling or judgment that was reached without such evidence. However, the applicant has to show that the new and important evidence was not within his knowledge or could not be produced at the time the ruling or judgment was passed (**Samuel Amugane & 4 Others –v- Attorney General [2018 eKLR]**).

9. I have read the applicant's supporting affidavit. Nowhere does he state that he was, at the time of the revocation application, or at all, unaware of the succession proceedings involving the estate of the late Kaigua, or that the respondent and her siblings had benefitted from that estate to his exclusion. It follows that the ground on which the application was based fails.

10. In any case, the impugned judgment revoked the grant issued to the applicant and set aside the distribution of the estate of the deceased. The court asked that the applicant and the respondent, or any of them, was at liberty to apply for the confirmation the grant. The law is that it is at the hearing of the application for the confirmation of the joint grant that the court will ascertain the extent of the estate of the deceased, identify the beneficiaries and dependants and distribute the estate to those entitled. It follows that the applicant has nothing to worry about. He will be given the opportunity to prove that the applicant and her siblings have no claim to the estate of the deceased.

11. In conclusion, I find no merit in the application which I dismiss.

12. This is a family dispute. Each side shall bear own costs.

DATED and DELIVERED at NAIROBI this 24TH day of SEPTEMBER, 2019.

A.O. MUCHELULE

JUDGE