



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

MILIMANI LAW COURTS

FAMILY DIVISION

SUCCESSION CAUSE NO. 1596 OF 2015

IN THE MATTER OF THE ESTATE OF GEOFFREY NGIGI NG'ANG'A (DECEASED)

PETER NG'ANG'A1ST PETITIONER

JAMES MUNGAI NGIGI.....2ND PETITIONER

PETER NG'ANG'A NGIGI.....3RD PETITIONER

VERSUS

IRENE WAMBUI NGIGI.....1ST RESPONDENT

PETER NG'ANG'A NGIGI.....2ND RESPONDENT

RULING

1. The deceased died intestate on 3rd April 2015. He was survived by two houses:

a. the house of Marion Njoki Ngigi (deceased) that had Peter Ng'ang'a (1st petitioner), James Mungai Ngigi (2nd petitioner), Stephen Mbugua Ngigi and Winnie Wahu Ng'ang'a as children; and

b. the house of the 1st respondent Irene Wambui Ngigi whose children are Peter Ng'ang'a Ngige (3rd petitioner and 2nd respondent), Ng'ang'a Ngige, Charity Wanja Ngigi, Alicia Wambui Ngigi and Winfred Wahu Ngigi.

2. It is clear that the 1st and 2nd petitioners filed this petition on 30th June 2015 for the grant of letters of administration in respect of the estate of the deceased. Although they indicated Peter Ng'ang'a Ngige as the 3rd petitioner, they did not obtain his signature, and consent. They indicated the 1st respondent to be the widow of the deceased but did not obtain her signature and consent. Peter Ng'ang'a Ngige did not sign the affidavit of the proposed administrators. In the affidavit of proposed sureties, the petitioners got the wife of the 1st petitioner and the wife of the 3rd petitioner to be sureties. All beneficiaries were named, but there was no care to have each signed the petition as a way of consenting to the same. Under **rule 26 of the Probate and Administration Rules** a petition for grant of letters of administration must be accompanied by a consent duly signed by all persons entitled to a share in the estate of the deceased (**Al Amin Abdulrehman Hatimu –v- Mohamed Abdulrehman Mohamed & Another [2013]eKLR**). **In the matter of the Estate of Mwaura Mutungi alias Mwaura Gichichio Mbura alias Mwaura Mbura, Nairobi HC. Succession Cause No. 935 of 2003** the grant was revoked because the petitioner failed to notify the applicant of the petition and obtain his consent.

3. Those are the reasons why the respondents filed the present preliminary objection dated 2nd July 2017 to state that the petition is incurably defective and should be dismissed with costs. Counsel filed written submissions on the objection. I have considered them.

4. I consider that no grant has so far been issued, although the petition was gazette. It is the objection that stopped the grant.

5. In **D.T. Dobbie & Company (Kenya) Ltd –v- Muchina [1982] KLR 1** it was held that no suit should be summarily dismissed unless it appears so hopeless that it plainly and obviously discloses no reasonable cause of action and is so weak as to be beyond redemption and incurable by amendment. Under **rule 73 of the Probate and Administration Rules** it is indicated that:-

“73. Nothing in these Rules shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.”

6. I am sure that, ultimately, all these beneficiaries are interested in the distribution of the estate of the deceased.

7. It would be costly and time consuming for the petition to be dismissed and to start all over again, considering the time the deceased died.

8. Consequently, instead of dismissing the petition, and considering that the deceased left two houses, I order that a joint grant be issued in the names of Irene Wambui Ngigi, Peter Ng’ang’a, James Mungai Ngigi and Peter Ng’ang’a Ngigi. I direct that within 60 days from today, the administrators, or any of them, shall file and serve an application for the confirmation of the grant. Upon service, there shall be a response within 30 days. This matter shall be mentioned on **25th November 2019** for further directions.

9. This is a family dispute. I make no orders as to costs.

DATED and DELIVERED at NAIROBI this 23RD day of SEPTEMBER, 2019.

A.O. MUCHELULE

JUDGE