



**REPUBLIC OF KENYA**

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

**MILIMANI LAW COURTS**

**FAMILY DIVISION**

**SUCCESSION CAUSE NO. 1214 OF 2000**

**IN THE MATTER OF THE ESTATE OF PAUL BORO NJEHU (DECEASED)**

**GEORGE MAKIMEI NJEHU.....1<sup>ST</sup> APPLICANT**

**MARGARET WARIARA NDUNGU.....2<sup>ND</sup> APPLICANT**

**VERSUS**

**ANTHONY MOSES NJEHU.....1<sup>ST</sup> PETITIONER/RESPONDENT**

**JANE WAITHERA BORO.....2<sup>ND</sup> PETITIONER/RESPONDENT**

**AND**

**PETER KIMANI BORO.....1<sup>ST</sup> INTERESTED PARTY**

**NJAMBI KARIU.....2<sup>ND</sup> INTERESTED PARTY**

**ESTHER WAMAITHA BORO.....3<sup>RD</sup> INTERESTED PARTY**

**LUCY WARIARA NJEHU.....4<sup>TH</sup> INTERESTED PARTY**

**PAUL BORON JEHU.....5<sup>TH</sup> INTERESTED PARTY**

**BANGO NJENGA NJEHU.....6<sup>TH</sup> INTERESTED PARTY**

**SIMON PETER KIMANI.....7<sup>TH</sup> INTERESTED PARTY**

**RULING**

1. The deceased Paul Boro Njehu died on 4<sup>th</sup> March 1985. The applicants George Makimei Njehu and Margaret Wariara Ndungu are children of his son Joseph Njehu Boro who has since passed on. The deceased left a parcel of land Muguga/Jet Scheme/292. The petitioners/respondents Anthony Moses Njehu and Jane Waithera Boro are son and widow, respectively, of the deceased. On 20<sup>th</sup> June 2000 they petitioned the court for the grant of letters of administration intestate. The grant was issued to them on 23<sup>rd</sup> August 2000, and confirmed on 7<sup>th</sup> December 2000. The deceased left three houses. The certificate of confirmation indicated that the 1<sup>st</sup> petitioner was to get 2.625 acres and his brother Peter Kimani Boro was to get 1.5 acres. They were to hold the land for subsequent sharing among all the beneficiaries of the estate.

2. The applicants seek the revocation of the grant on the basis that the petitioners had not involved their late father Joseph Njehu Boro and other beneficiaries of the estate, and had failed to inform the court that they existed. Further, that the deceased had left 3 widows and had left a written Will on how the estate was to be shared, something that was not brought to the attention of the court.

3. The replying affidavit was sworn by the 1<sup>st</sup> petitioner who stated that it was true that the deceased had left a Will; that, following the deceased death, the Will was read in a meeting of the family and elders; the Will was not contested; and it was on the basis of the Will that they came to Court and had the estate shared. He annexed minutes of the meetings of the family and the elders. His case was that, all the time, the applicants' father attended the meetings. Subsequently, he (the applicants' father) sold his portion of the estate for Kshs.5,000/= to the petitioner. He subsequently had no further claim to the deceased's estate.

4. The 1<sup>st</sup> applicant swore a further affidavit. He did not deny that his late father had participated in the family meetings following the death of the deceased, and that he had been bought off by the 1<sup>st</sup> petitioner. His claim was that now that the deceased had left a written Will the petitioners ought not to have come to court on the basis that the deceased had died intestate.

5. I agree that, now that it is common ground that the deceased had left a written Will, the petitioners ought to have petitioned for the grant of probate, and not a grant of letters of administration intestate. However, I consider that the grant was confirmed on 7<sup>th</sup> July 2000. It was confirmed when the applicants' father was alive, and he had not challenged it. The estate was shared subsequent to the confirmation. The applicants' have not sought to explain why it has taken them this long to seek the revocation of the grant. Further, there has been no claim that the distribution of the estate of the deceased did not accord with the wishes expressed in his Will.

6. The applicants could only benefit from the deceased's estate through their late father. He was alive when the estate was shared and laid no claim. He would not have laid a claim to the estate because he had sold his entitlement to the 1<sup>st</sup> petitioner.

7. In conclusion, I find no merit in the application for revocation dated 25<sup>th</sup> January 2019 which I dismiss with costs.

**DATED and DELIVERED at NAIROBI this 23<sup>RD</sup> day of SEPTEMBER, 2019.**

**A.O. MUCHELULE**

**JUDGE**