



REPUBLIC OF KENYA

IN THE HIGH COURT

AT NAIROBI

(FAMILY DIVISION)

SUCCESSION CAUSE NO 65 OF 2009

IN THE MATTER OF THE ESTATE EDWARD KAMAU NG'ANG'A (DECEASED)

DENNIS NJOGU KAMAU.....1ST APPLICANT

FIDELIS WAMBUI KAMAU.....2ND APPLICANT

VERSUS

GRACE WANGARI KAMAU.....1ST RESPONDENT

KENNETH NG'ANG'A KAMAU.....2ND RESPONDENT

ROSE WAITHIRA KMAU.....3RD RESPONDENT

R U L I N G

1. The deceased herein died on the 3rd of December 2007 and a petition for grant of letters of administration filed by his wife, two sons and a daughter on the 15th of January 2009.
2. He was said to have left behind 9 survivors 3 sons, several daughters and a widow.
3. A grant was issued on 4th of June 2009 and confirmed on the 17th of October 2011.
4. By the turn of events on the 19th of June 2017 a summons for revocation of grant was filed by Dennis Njoroge Kamau and Fidelis Wambui Kamau on grounds that the grant was obtained fraudulently by concealment from the court of material facts; as the Applicants who are children of the deceased were disregarded and disinherited.
5. The Applicant's case is that they were borne of the one Loise N. Mundia. And that they were minors at the time the grant was issued. In support of their claim they produced their birth certificates bearing names of their parents; a maintenance support agreement dated 20th June 2002 between their parents and a letter by Mbichi Mboroki Advocate to their late father reminding him of his obligations based on the agreement.
6. The Applicants had sought for a DNA test but later withdrew the application through a consent filed in court.
7. The Respondents who are the children of the deceased, in an application dated 15th May 2019 sought to block Mbichi Mboroki advocate who has been summoned as a witness by the Applicants for the reason that the said advocate is likely to disclose information relating to his association with the deceased and his estate if allowed to testify.
8. In an affidavit sworn by the 2nd Respondent he states that the said advocate generally acted for the deceased and has confidential information regarding him and he cannot now act against the estate.
9. The maintenance and support document indicate that it was made pursuant to a meeting held at Mbichi Mboroki & Co. Advocate, and the said advocate was also a signatory to the said document.

Secondly, Mbichi Mboroki Advocate wrote to the deceased at the behest of the Applicants' mother Loise N. Mundia, which letter the applicants wish to rely on. The said witness and the agreement are crucial for the applicants' case.

10. The deceased is not a litigant herein and the issue of privileged communication between a counsel and his client does not arise. The issue before court is whether the Applicants are children of the deceased or not and whether they should be provided for.

11. The court would require evidence as to whether there was a relationship between the deceased and Loise and if so if they sired the applicants and/or any other relevant information that would assist the court to arrive at a justifiable conclusion.

12. Mbichi Mboroki Advocate authored two documents that ate likely to shade more light in this matter, his presence is not prejudicial to the respondent as such. The deceased is not on trial here it is his estate at the centre of a controversy.

13. I see no merit in the application and same is dismissed with costs to the Respondents.

Dated and Delivered in Nairobi on this 19TH day of December, 2019

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ALI-ARONI

JUDGE