



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MIGORI

SUCCESSION CAUSE NO. 275 OF 2015

IN THE MATTER OF THE ESTATE OF NORERI CHACHA (DECEASED)

-BETWEEN-

OMARI MARWA ADAN.....PETITIONER

-and-

JACOB GITINGORI MWITA

BENEDICT MARWA MWITA

AUGUSTINE PETER MWITA.....OBJECTORS/APPLICANTS

RULING

1. The Petitioner herein, **Omari M. Adan**, petitioned for the administration of the estate of the deceased through **Succession Cause No. 22 of 2010** at Kehancha Law Courts sometimes in May 2010. A Grant was issued on 09/08/2010.
2. An Objection to Making of a Grant dated 30/08/2010 was thereafter filed by the Objectors herein and was supported by the Objectors' joint Affidavit of Protest against Confirmation. They contended that the Petitioner is a total stranger to them and the estate and he is not entitled to the estate in any way including administering it. They prayed that the Grant issued to the Petitioner be revoked and a fresh grant be issued to the three Objectors instead.
3. The Objection was opposed by the Petitioner. The Objection was fully heard but before delivery of the ruling the court transferred the matter to the High Court at Kisii on account of jurisdiction. The High Court set-aside the proceedings and ordered a fresh hearing. The matter was then transferred to this Court.
4. The Objection was heard by way of oral evidence. The Petitioner testified and contended that he is entitled to the estate on two fronts: first, being one of those within the acceptable degree of consanguinity given that the deceased was married to his uncle one **Chacha Magiri** (also deceased) and did not have children. The Petitioner admitted that the Objectors are as well entitled to the estate property just like himself as Jacob Gitingori Mwita and Benedict Marwa are children of his other uncle one **Augustine Mwita Magori** whereas Augustine Peter Magori was a grandson to the said Augustine Mwita Magori.
5. The second aspect of the Petitioner's claim was that he redeemed the estate property from a third party and incurred expense thereto. He relied on the statement and documents he filed in further support to his case.
6. The Objectors further contended that the Petitioner misled the court and filed false documents in a bid to irregularly administer the estate. That, the Petitioner stated that he was the only beneficiary a fact he knew to be untrue and as such cleverly intended to disinherit so many people who have interests on the land. That, the Petitioner did not get the consent of the beneficiaries as required in law. It was further contended by the Objectors that according to Kuria customs the Petitioner was not entitled to any inheritance of the estate property since her mother, although a daughter in their family, had been married away from their home and she could not inherit from her father's side but only from where she was married to. The Objectors also denied the allegation that the Petitioner redeemed the estate land.
7. Counsels filed submissions where they fortified their rival positions. I have carefully considered the Petition, the Objection, the Affidavits, the entire proceedings from the Magistracy and the submissions in this matter. It is not in doubt that all the parties herein are close relatives and that the estate property is not registered in any of the parties' parents' names. Each of the parties' contention on entitlement is hinged on some degree of consanguinity to the deceased although the Objectors invoked the Kuria customs in demonstrating that the Petitioner is not entitled to inherit from the estate. There is also the issue of redemption of the estate property.

8. It is also not in doubt that the Petitioner misrepresented facts while petitioning for the grant. For instance, it is not true that he was the only beneficiary to the estate and as such he avoided the issue of filing the mandatory consents. There is also the issue of whether the Petitioner redeemed the estate property since if that is true then the Petitioner may have a further entitlement in the estate.

9. The foregone lends credit to the fact that it is the confirmation of the grant which will finally settled all the issues in contention. That being the position, it is also fair that both sides are represented in the administration of the estate pending the confirmation. I therefore find the objection merited and is hereby sustained.

10. This Court hereby makes the following final orders: -

(a) The Grant issued on 09/08/2010 to the Petitioner herein be and is hereby revoked.

(b) A Fresh Grant to issue in the joint names of the Petitioner and JACOB GITINGORI MWITA.

(c) The Administrators and/or any of them shall file for the confirmation of the Fresh Grant within 30 days of issuance and serve the same upon all interested parties within 14 days of filing.

(d) A date for directions shall be fixed at the Registry within 120 days of today.

(e) Costs of the Objection to abide the outcome of the confirmation proceedings.

Orders accordingly.

DELIVERED, DATED and SIGNED at MIGORI this 08th day of March 2018.

A. C. MRIMA

JUDGE

Ruling delivered in open Court and in the presence of: -

Mr. Kerario Marwa Counsel instructed by Messrs. Kerario Marwa & Company Advocates for the Petitioner.

Mr. Abisai Counsel instructed by Messrs. Abisai & Company Advocates for the Objectors.

Ms. Nyauke - Court Assistant