



**REPUBLIC OF KENYA**

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

**SUCCESSION CAUSE NO. 5 OF 2016**

**IN THE MATTER OF THE ESTATE OF BENJAMIN MUTHANGYA NGATI (DECEASED)**

**BEATRICE KAMENE MUTHANGYA)**

**JOHN KIMANZI MUTHANGYA).....ADMINISTRATORS**

**R U L I N G**

1. **Benjamin Muthangya Ngati** (Deceased) died domiciled in **Kenya** on **16<sup>th</sup> May, 2004**. **Beatrice Kamene Muthangya** and **John Kimanzi Muthangya** petitioned for grant of Letters of Administration Intestate (grant) of his Estate in their capacity as widow and son respectively. In the affidavit in support of the Petition they listed persons surviving the Deceased as follows:

- **Beatrice Kamene Muthangya – Widow.**
- **John Kimanzi Muthangya – Son.**
- **Isaac Mutuku Muthangya – Son.**
- **Elijah Mutunga Muthangya – Son.**
- **Peter Lumumba Muthangya – Son.**

2. The grant was issued to the Petitioners on the **7<sup>th</sup> day of February, 2011**. The Deceased left assets:

- **Mwingi/Mwingi/220.**
- **Mwingi/Kanzau/268, 271, 272, 873, 880, 1696, 1721, 1759, 2964.**

The grant was confirmed on the **18<sup>th</sup> day of November, 2011**. The Administrators of the Estate were to hold the entire Estate in trust for other beneficiaries.

3. On the **11<sup>th</sup> day of August, 2014**, **Kyambi Muthangya** filed summons for revocation of the grant. She sought preservative orders that would restrain the Administrators from dealing with the land or from evicting her from the land. **Kyambi Muthangya** averred that she was the first wife of the Deceased and therefore a beneficiary of the Estate and she had sired children with the Deceased namely:

- **Syombua Muthangya.**
- **Kasau Muthangya.**
- **Kanini Muthangya.**
- **Musili Muthangya.**
- **Munanu Muthangya.**

All adults.

The allegations were denied by the Administrators. They argued that the Deceased's first wife who was Deceased was **Beatrice Muthangya** who died in the year **2005** without any child. **Jaden J** determined the matter and reached a finding that the matter could only be determined by way of *viva voce* evidence and proceeded to preserve the Estate of the Deceased.

4. Subsequently **Kyambi Muthangya** died. Her Advocate, **Mr. Kalili** applied to cease representing her for none of her children were interested in the matter, an application that was granted.

5. Consequently the Administrators of the Estate approached the Court by way of Notice of Motion dated **29<sup>th</sup>** day of **March, 2018** seeking to be allowed to take vacant possession of the Estate of the Deceased; that the Court do order the occupants of the land belonging to the Deceased to vacate and the Court to lift the conservatory orders granted by the Court.

6. The application is premised on grounds that the Applicant (**Kyambi Muthangya**) died and none of her family members was interested in prosecuting the application.

**Beatrice Kamene Muthangya** swore an affidavit in support of the application where she deponed that the Administrators were ordered to administer the Estate in accordance with the law and since **Kyambi's** children did not wish to be substituted so as to prosecute the application, preservative orders granted be lifted and occupants of the Estate of the Deceased be ordered to vacate.

7. The application by its nature was unopposed.

8. In her application **Kyambi** (now Deceased) urged the Court to find that the grant was obtained fraudulently by making of a false statement and concealing something material in respect of the Estate.

9. In her Ruling **Jaden J** made an order preserving the Estate and prohibiting the Administrators of the Estate from disposing or transferring to themselves the parcels of land that formed the Estate of the Deceased pending hearing of the application for revocation of the grant.

10. The Applicant having died and any other person having not expressed the intention to prosecute the application there is no reason why the orders should remain in force. In the premises I do lift the preservative orders made by the Court. With regard to the 2<sup>nd</sup> limb of the application, the Court is duty bound to ensure the Estate of a Deceased person is protected, however there is no indication of who the occupants of the parcel of the land are. Therefore this Court cannot make orders in vain.

11. It is so ordered.

**Dated, Signed and Delivered at Kitui this 31<sup>st</sup> day of July, 2018.**

**L. N. MUTENDE**

**JUDGE**