



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

SUCCESSION CAUSE NO. 977 OF 2012

N THE MATTER OF THE ESTATE OF NZIVO MULANG'A MAINGI- DECEASED

BETWEEN

NICHOLAS MBITHI SILI.....OBJECTOR/APPLICANT

VERSUS

KIMANTHI NZIVO.....1ST ADMINISTRATOR/RESPONDENT

JOSEPH MAVINDU MWILU.....2ND ADMINISTRATOR/RESPONDENT

RULING

Introduction

1. By a Grant of Letters of Administration Intestate of 4th December, 2012, in respect of the Estate of the late **Nzivo Mulang'a Maingi** (hereinafter referred to as "the deceased") this Court issued the same to **Kimanthi Nzivo** and **Joseph Mavindu Mwilu**.
2. The said grant was later confirmed and Certificate of Confirmation of Grant issued on 11th October, 2013. By which Land Parcel No. Muthetheni/Ngamba/544 was confirmed to the two administrators in equal shares.
3. However by way of Summons for Revocation or Annulment of Grant dated 23rd November, 2016, the Objector/Applicant herein, **Nicholas Mbithi Sili**, applied for the following orders:

(1) That the confirmed grant of Letters of Administration (intestate) issued to the said Kimanthi Nzivo and Joseph Mavindu Mwilu in this matter on 11/10/2013 and dated 18/11/2013 be revoked and or annulled as the grant was obtained fraudulently by the making of false statements and by the concealment of material facts from the Court.

(2) That the Objector/applicant herein be included as a beneficiary of the estate of the deceased herein.

(3) That the Objector be at liberty to file his affidavit as to the proposed mode of distribution for this Court's consideration before re-hearing of the application for confirmation of grant.

(4) That the costs of this application be borne by the respondent.

4. According to the Objector he is one of the beneficiaries of the deceased's estate by virtue of being a son to the deceased's late son, **Joel Sili Nzivo**, thus the deceased herein was his grandfather. However the confirmed grant of Letters of Administration herein was obtained fraudulently by the making of false statements and by the concealment of material facts since the 1st Administrator/Respondent herein is well aware that the deceased left behind three children, the late **Joel Sili Nzivo**, himself (the 1st Respondent) and the late **Daniel Muasya Nzivo**. It was further deposed that both administrators were fully aware that the deceased's children left behind wives and children and further that the deceased had already divided amongst his children and prior to their demise, the only asset he had, that is parcel of land number Muthetheni/Ngamba/544 measuring 10.2 hectares.

5. According to the Objector, both administrators were further fully aware that the families of the deceased's said late children have always resided on the portions given to their fathers, the deceased's late children and that they have built permanent homes therein. However the Objector was never informed of or involved in the succession proceedings herein or in the final application for confirmation of grant herein and the same was done secretly without his knowledge and consent. It was his position that these proceedings were instituted and prosecuted without disclosing all the beneficiaries of the estate. It was disclosed that while the three people mentioned in the further affidavit, **Joel Sili**

Nzivo (deceased), **Kimanthi Nzivo** and **Daniel Muasya Nzivo** (deceased) were the only children left behind by the deceased, the fourth person listed therein was not a beneficiary of the estate. On the other hand **Mukonyo Sili** (deceased) and **Edna Daniel Muasya** were the wives to the late **Joel Sili Nzivo** (deceased) and **Daniel Muasya Nzivo** (deceased). It was however averred that the Respondents did not specify whether the deceased's late children left behind families, a fact which was meant to render the applicant homeless.

6. It was therefore the Objector's case that it is only fair and just that the distribution of the deceased's estate be done transparently considering all the beneficiaries thereof.

7. The application was not opposed by the Respondents who though served did not appear at the hearing of the instant Summons. Accordingly, the facts deposed to by the objector were not controverted.

8. According to the Objector, the Administrators left out the beneficiaries to the estate of the deceased but instead included the 2nd Administrator, **Joseph Mavindu Mwilu**, who was a son of **Mwilu Mulanga**, a brother of the deceased.

9. As the facts were not disputed, it is clear that the act of incorporation a son to the brother of the deceased as a beneficiary of the state of the deceased constituted a false statement. Further the omission to include the children of the deceased's children as beneficiaries of the estate thereof when the estate had been distributed to their late fathers, amounted to concealment of material facts from the Court.

10. In the premises I have no hesitation in revoking the certificate of confirmation of grant issued herein on 11th October 2013 and dated 18th November, 2013 which I hereby do. In light of the contents of the affidavit of proposed distribution sworn by the Objector herein pursuant to this Court's order of 21st March, 2017, a fresh Certificate of Confirmation of Grant in respect of the estate of the deceased herein, **Nzivo Mulang'a Maingi**, shall issue in which the Parcel of Land No. Muthetheni/Ngamba/544 measuring 10.2 hectares shall be registered in the names of **Kimanthi Nzivo** and **Nicholas Mbithi Sili** to hold for themselves and in trust for all the beneficiaries of the estate of the deceased.

11. There will be no order as to costs.

12. It is so ordered.

Read, signed and delivered in open Court at Machakos this 31st day of July, 2018.

G V ODUNGA

JUDGE

Delivered in the absence of the parties.

CA Geoffrey