



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

SUCCESSION CAUSE NO. 357 OF 2006

IN THE MATTER OF THE ESTATE OF KIITI MULINGE NGAO – (DECEASED)

GRACE KAILU KIITI1ST PETITIONER

PAUL WAMBUA KIITI2ND PETITIONER

VERSUS

PHILIP KISILU KIITIOBJECTOR

RULING OF THE COURT

The Application

1. The Summons for Confirmation and Rectification of Grant filed herein is dated **12th February, 2014**. The Summons prays for an order that the grant of letters of administration intestate issued to **Paul Wambua Kiiti** and **Philip Kisilu Kiiti** on **7th December, 2011** be amended to remove the 2nd Petitioner from the said grant and to replace him with **Grace Kailu Kiiti** who is the administrator in the Petition forms

2. The application is founded on the grounds that the grant of letters of administration aforesaid was issued with the 2nd administrator who was wrongly included in the said grant instead of **Grace Kailu Kiiti** who is a widow of the deceased, and that the estate of the deceased be distributed among his beneficiaries. The Summons is supported by affidavit of **Grace Kailu Kiiti** sworn on **12th February, 2014**. The applicant's case is that she is the 1st administrator in this cause and as such competent to make the application. On the 7th December, 2011 a Grant of Letter of Administration Intestate to the estate of the late **Kiiti Mulinge Ngao** who died on the 5th September, 2001 was issued to **Paul Wambua Kiiti** and **Philip Kisilu Kiiti**. The 2nd Petitioner ought to be removed from the said grant and be replaced with **Grace Kailu Kiiti** who has been the 1st Administrator from the time of petitioning for the letters of administration. The following correction need to be made on the Grant of letters of administration;- the 2nd administrator (*Philip Kisilu Kiiti*) in the said Grant be removed and **Grace Kailu Kiiti** be replaced with him. That the Grant be confirmed with the estate of the deceased distributed as follows;-

- **Kalama/Kiitini/648**
- Whole be registered in the names of **Philip Kisilu Kiiti**
- **Kalama/Kiitini/566**
- ½ of this be registered in the names of **Ndakava Kiiti**
- ½ be registered in the names of **Grace Kailu Kiiti**.

The Response

3. The Summons are opposed by the respondent vide a replying affidavit sworn on **28th May, 2014**. The respondent’s case is that the said application is not only lacking in merit but also that the same is frivolous and vexatious. That the said application is brought in bad faith with the sole intention of frustrating the determination of the cause herein. That the correct position as the proceedings will reveal is that the administrators were joint pursuant to an order of the court granted after the said administrators entered a consent to that effect. The respondent states that they agreed to be made co-administrators with **Paul Wambua Kiiti** for purposes of distributing the assets in respect to the estate. There is no mistake whatsoever in issuing the stated grant as alleged by the applicants and that the application is only meant to convulate the instant proceedings. The respondent believes that the said Grace Kailu Kiiti will not be prejudiced in any manner if the matter proceeds as ordered by the court.

Submissions

4. Parties with the leave of court filed submissions which I have considered. The issue I raise for determination is whether or not good reasons have been advanced for the grant of the said orders. The applicant submitted that there was a consent to replace Grace with Philip for the reasons that the deceased Kiiti had two wives. He shared his property to his two wives. After his death Grace sold her share to Paul Kiiti parcel No. Kalama/Kiitini/648 and immigrated to Kambu area. The second wife was left at Kalama. Thus when Grace applied for Letters of Administration she had no property in Kalama. Her obligation was to transfer parcel No. Kalama/Kiitini/648 being her share of the estate of Paul Kiiti to whom she had sold it. In her petition for Letter of Administration apart from being a beneficiary for the purpose of transferring her share of the estate she sold to Paul Kiiti and she joined him as her co-administrator.

Determination

5. I have considered the Summons. No reasonable grounds have been put forth by the applicant for rectification of the grant, except that **Paul Wambua Kiiti** has refused to cooperate and in particular, has refused to attend court for purposes of distribution of the property. This is not a good ground upon which to issue the orders sought. If one party refuses to attend court, Summons can always be issued to compel them to attend, and if they refuse, they can be jailed for contempt of court.

6. I dismiss the application with costs in the cause.

Orders accordingly.

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E.K.O. OGOLA

JUDGE

DATED, SIGNED AND DELIVERED AT MACHAKOS THIS 23RD DAY OF FEBRUARY, 2017

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DAVID KEMEI

JUDGE

In the presence of:

Musyimi – for Kimeu for Objector

Mulei – for Kisingoa for Petitioner

