



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT GARISSA
SUCCESSION CAUSE NO. 20 OF 2014

IN THE MATTER OF THE ESTATE OF BENJAMIN VUNDI KITONGA

(DECEASED)

MARY MWENDE MUTHUI..... 1ST PETITIONER

PETER KILONZO KATHEKA..... 2ND PETITIONER

VERSUS

JOHN KITONGA MITA.....1ST OBJECTOR

ELIZABETH WAMBUI.....2ND OBJECTOR

RULING

This succession cause was commenced at Mwingi Senior Resident Magistrate's P & A Cause No. 3 of 2012. The petitioners were two, that is Mary Mwendu Muthui and Peter Kilonzo Katheka. After commencement of proceedings, two persons John Kitonga Mita and Elizabeth Wambui came on record as objectors.

The matter thereafter came up before the magistrates' court on a number of occasions. On 24th September 2012, in the presence of the petitioners and the objectors, the learned magistrate Hon. L.W. Gichobi, on the strength of the affidavit sworn on 21st March 2012 by the objectors John K. Mita and Elizabeth Wambui that the estate was worth more than Kshs. 500,000=, transferred the matter to the High Court as the jurisdiction of the magistrates court was limited to an estate, whose value did not exceed Kshs. 100,000=

Thereafter, a Notice of Motion dated 2nd July 2013 was filed by the petitioners in this court under Miscellaneous Civil Application No. 8 of 2013, for the formal transfer of the matter to this court.

The application to transfer the succession cause to the High Court was not heard, for sometime, and in 2015 this court decided to proceed with the matter without undue delay or technicalities.

This court then issued a grant for representation of letters for administration to Mary Mwendu Muthui and Peter Kilonzo Katheka a brother of the deceased as there were two minor children.

At the hearing of the summons for confirmation of grant, only Mary Mwendu Muthui appeared in court. Peter Kilonzo Katheka the second administrator did not attend court. Mary Mwendu Muthui informed the court that he was busy in Nakuru. The objectors John Kitonga Mita the father of the deceased, and Elizabeth Wambui who was said to be a second wife of the deceased did not attend court.

The only asset of the estate disclosed, was death gratuity held by the Public Trustee, whose amount was not disclosed to the court. This court confirmed the letters of administration and the two administrators Mary Mwendu Muthui and Peter Kilonzo Katheka were to hold the assets of the estate in trust for the other dependants and beneficiaries.

The administrators have now come to this court through a Summons dated 23rd February, 2017 requesting that the court appoints Mary Mwendu Muthui and Peter Kilonzo Katheka as new Trustees in the place of the Public Trustee. They attached in their application, two unreferenced letters dated 12th January 2017 signed by C N. Wasilwa Chief State Counsel, on the entitlement of the two minors RICHARD MWANGANGI VUNDI, and SHARON MUSANGI VUNDI.

My recollection of this matter is that the court did not at any point appoint the Public Trustee as administrator of this estate or any part of it, Under section 56,57 &58 of the Law of Succession Act(cap.160). In effect therefore, if the Public Trustee held any property in respect to this estate, he or she is required by law to make a full account and disclosure of same to this court.

I therefore order that before this court considers the request of the administrators herein, the following be done-

1. The Public Trustee will file in this court a written full disclosure and account of all assets received by them, and dealings thereon, in the estate of the deceased herein, by the mention date hereunder.
2. This matter will be mentioned on 23rd May 2017 to confirm filing of the full disclosure and account on the assets in the estate herein above from the Public Trustee, for further directions and orders of this court.
3. The above orders will be served on the Public Trustee in Nairobi, and the Assistant Public Trustee's office in Garissa for compliance.

Dated and delivered at Garissa this 11th April 2017.

George Dulu

JUDGE