



**REPUBLIC OF KENYA**

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

**SUCCESSION CAUSE NO. 11 OF 1991**

**IN THE MATTER OF THE ESTATE OF NZIOKA MUATHAI (DECEASED)**

**BETWEEN**

**PETER MATHEKA NZIOKA .....PETITIONER**

**VERSUS**

**MBITHI NZIOKA**

**RAPHAEL NGEI NZIOKA**

**MULI NZIOKA.....OBJECTORS**

**AGEOGINAH NTHENYA NZIOKA.....INTERESTED PARTY**

**RULING**

The deceased Nzioka Muathai (hereinafter referred to as “the Deceased”), died on the 16<sup>th</sup> of January, 1988, and the Petitioner subsequently applied for grant of letters of administration intestate of the deceased’ estate. The same was issued to the Petitioner on 24<sup>th</sup> August 1992.

However, prior to the issue of the grant, an objection was raised by the Objectors to the making of the grant to the Petitioner, which objection was filed on 17<sup>th</sup> August, 1992. Later, on 4<sup>th</sup> May, 2015, the Interested Party who stated she was underage at the time of the filing of the objection also swore an affidavit objecting to the making of the grant. The 2<sup>nd</sup> Objector also filed an affidavit on the same date, reiterating his objections and seeking that the Interested Party be joined as an Objector.

It is the Objector and Interested Party’s case that the Petitioner has since the grant of the letters of administration not taken any steps to distribute the estate. The Objectors and Interested Party further lamented that the Petitioner, who was a child of the first wife of the Deceased, while taking out the letter of administration failed to disclose to the court the fact that the Deceased had a second wife being Nzioka Muathai (deceased), and that the Objectors and Interested Party were children of the second wife.

The Objectors and Interested Party sought a share of their deceased father’s estate. It was further alleged that the Petitioner has sold some portions of the Deceased’s land without consulting the Objectors.

The Petitioner did not respond to the Objectors’ and Interested Party’s Objection, who relied on their affidavits and sought a ruling.

## **The Issues and Determination**

I have read and carefully considered the pleadings filed by the Objectors and Interested Party. The issues to be decided are firstly, whether the objection by the Objectors and Interested Party should be upheld; and secondly if so whether the grant issued to the Petitioner should be revoked.

On the first issue the provisions on the making of an objection are in sections 67 to 69 of the Law of Succession Act as follows:

### **“67. Notice of application for grant**

**(1) No grant of representation, other than a limited grant for collection and preservation of assets, shall be made until there has been published notice of the application for such grant, inviting objections thereto to be made known to the court within a specified period of not less than thirty days from the date of publication, and the period so specified has expired.**

**(2) A notice under subsection (1) shall be exhibited conspicuously in the courthouse, and also published in such other manner as the court directs.**

### **68. Objections to application**

**(1) Notice of any objection to an application for a grant of representation shall be lodged with the court, in such form as may be prescribed, within the period specified by such notice as aforesaid, or such longer period as the court may allow.**

**(2) Where notice of objection has been lodged under subsection (1), the court shall give notice to the objector to file an answer to the application and a cross application within a specified period.**

### **69. Procedure after notice and objections**

**(1) Where a notice of objection has been lodged under subsection (1) of section 68, or no answer or no cross-application has been filed as required under subsection (2) of that section, a grant may be made in accordance with the original application.**

**(2) Where an answer and a cross-application have been filed under subsection (2) of section 68, the court shall proceed to determine the dispute.”**

Rule 17(1) of the Probate and Administration Rules also provides as follows in this regard:

***“Any person who has not applied for a grant to the estate of a deceased and wishes to object to the making of a grant which has been already applied for by another person may do so by lodging within the period specified in the notice of the application published under rule 7(4), or such longer period as the court may allow, either in the registry in which the pending application has been made or in the principal registry, an objection in form 76 or 77 in triplicate stating his full name and address for service, his relationship (if any) to the deceased and the grounds of his objection”.***

In addition, Rule 17 subrule 11 provides that so long as an objection which has been lodged has not been withdrawn, no grant shall be made by any registry to the estate of the deceased, prior to the expiration of the period for the filing by the objector of an answer and cross-application specified by the court under section 68 of the Act. Further, that no registrar shall make a grant if he has knowledge of the existence of an effective objection lodged in any registry in respect of the estate of the deceased.

It is evident from the above provisions that the grant of administration made to the Petitioner was irregular as it was made while an objection to the making of grant was pending, the said objection having

been validly filed within 30 days of the gazettelement of the Petitioner's application for grant in Gazette No. 2857 on 24<sup>th</sup> July, 1992.

A perusal of the Petition for Letters of Administration Intestate filed by the Petitioner on 6<sup>th</sup> November 2013 and the affidavit in support also shows that of the survivors and beneficiaries of the Deceased, it is only the 2<sup>nd</sup> Objector that was disclosed. The Petitioner did not dispute that the deceased had two wives and other children, and It is thus evident that there was material disclosure on his part.

Section 76 of the Law of Succession Act (Chapter 160 of the Laws of Kenya) provides as follows in this regard:

**“A grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by any interested party or of its own motion-**

**(a) that the proceedings to obtain the grant were defective in substance;**

**(b) that the grant was obtained fraudulently by the making of a false statement or by the concealment from the court of something material to the case;**

**(c) that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently;**

**(d) that the person to whom the grant was made has failed, after due notice and without reasonable cause either-**

**(i) to apply for confirmation of the grant within one year from the date thereof, or such longer period as the court has ordered or allowed; or**

**(ii) to proceed diligently with the administration of the estate; or**

**(iii) to produce to the court, within the time prescribed, any such inventory or account of administration as is required by the provisions of paragraphs (e) and (g) of section 83 or has produced any such inventory or account which is false in any material particular; or**

**(e) that the grant has become useless and inoperative through subsequent circumstances.”**

The prayers sought in the Objection and affidavits by the Objector and Interested Party are accordingly found to have merit, and it is accordingly ordered as follows:

1. The grant of letters of administration intestate issued herein to Peter Matheka Nzioka on 24<sup>th</sup> August 1992 with respect to the estate of Nzioka Muathai (Deceased) be and is hereby revoked.
2. Any distribution, transfers and dispositions of any kind of any of the deceased's property including the property known as Muputi/Kiima Kimwe/1232 by the Petitioner, and any other subsequent dealings with the said properties be and are hereby declared null and void, and shall be cancelled forthwith.
3. The **Petitioner, Objectors and Beneficiaries of Nzioka Muathai (Deceased) shall agree and file a consent on the new administrators of the Estate of the said Deceased within 60 days, failing which this Court shall appoint the new administrators of the said Estate.**
4. **The status quo that shall obtain as regards the properties and assets belonging to the Estate of Nzioka Muathai (Deceased) pending the appointment of new administrators shall be**

**that the Petitioner, Objectors and Beneficiaries of the Deceased shall continue to be in possession and occupation of the said properties and assets they currently occupy; and that the Petitioner, Objectors and Beneficiaries shall not sell, transfer, lease, undertake any further developments on, or in any manner dispose of or waste the said properties and assets.**

5. There shall be no order as to costs.

There shall be no order as to costs.

Dated, signed and delivered in open court at Machakos this 18<sup>th</sup> day of September 2017.

**P. NYAMWEYA**

**JUDGE**