



REPUBLIC OF KENYA

IN THE HIGH COURT

AT BUNGOMA

SUCCESSION CAUSE NO.137 OF 2005

JOSEPH WANJALA MURERE.....APPLICANT

VERSUS

FRANCIS TINDI NYONGESA.....RESPONDENT

J U D G E M E N T

1. The deceased herein Juma Matayo Murere died on the 30th of October 1982 in Bungoma. He had married 4 wives during his life time. Nothing was said of his widows or daughters. It is evident however that he left behind 11 sons and/or (survivors) of his Estate.

2. Details of his sons are:

Ist House

i. Vincent Maloba

ii. Moses Juma

iii. Keyari Juma Murere

2nd House

i. Francis Nyongesa

ii. Richard Wabwire

3rd House

i. Joseph Wanjala Murere

ii. John Barasa

iii. Julius Wafula Murere

4th House

i. Ernest Wafula Murere

ii. Waliaula Juma Murere

iii. Emmanuel Wanjala Murere

3. After the demise of the deceased, Francis Tindi Nyongesa his son from the third house petitioned for grant of letters of administration in the Resident Magistrate Court, Succession Cause number 34 of 1983. The said grant was confirmed on the 3rd of September, 1984.

4. It is Francis' contention that he followed all laid down procedures in petitioning for the grant and subsequently subdivided the only asset named therein being land parcel No.Ndivisi/Makuselwa/106 with intentions of distributing to 7 of his brothers who were entitled to inherit the same. He claimed to have transferred to 4 and is yet to transfer to 3 others. He argues that 5 of his other brothers were gifted land in Kanduyi and in particular, the applicant herein was gifted E.Bukusu/Kanduyi/803 and is not entitled in the remainder of the Estate.

5. The objector herein Joseph Wanjala Murere filed an application on 24th of May 2005 seeking for revocation and/or annulment of the grant issued to the petitioner; further that the petitioner do account for proceeds of sale of part of the Estate irregularly sold, cancellation of the subdivision and costs.

6. The objector asserted that the application for grant was fraudulent as consents of other beneficiaries were not obtained, secondly at the time of petitioning three of the beneficiaries were minors and hence the petitioner could not have been a sole administrator, thirdly the application for confirmation and subsequent confirmation was irregular in that the court did not receive details of the beneficiaries to satisfy itself if the proposed distribution and the subsequent distribution had left out some heirs.

7. Having considered the pleadings, evidence and submissions by both sides I am of the view that issues for determination are

i. Whether or not the grant was obtained irregularly

ii. Whether the confirmed grant met the necessary requirements.

iii. Whether to cancel the subdivision arising from the confirmed grant.

8. Section 66 of the Law of Succession Act (The Act) set those who may apply for a grant of letters of administration in order of preference. These are surviving spouse or spouses with or without application, S.39 of the Act on the other hand lists children, parents, brothers etc.

9. On the other hand probate and administration rules in particular rule 7 requires that where a person not being a person in preference as listed in section 66 of the Act seeks for grant of administration intestate he shall satisfy the court that any other person having a prior preference has consented.

10. The Act also in section 71 requires in cases of intestacy that before confirmation of agreement the court be satisfied as to the respective identities and shares of all persons beneficially entitled and such grant will specify all such persons and their respective shares.

11. The objector/applicant and his brother Moses Wanjala Marauni informed the court that they did not consent to the petitioner's application to court although the petitioner's contention is that he complied with all requirements. Nothing would have been easier than the Petitioner making available a copy of the consent of his brothers, sisters and any of the widows then alive to show that they had consented to his application for grant of representation.

12. Clearly from the confirmed grant the learned magistrate did not specify the beneficiaries nor their respective shares. It is not clear either whether details were presented to the court. What is clear is that as

a result of the said grant complains were made by other beneficiaries and indeed one widow went to the lands tribunal (now defunct) to claim her share of the estate. Secondly the petitioner in his own admission says he has not transferred to all of the beneficiaries named in the grant. It is not clear also how he arrived at the distribution without the consent of the rest of the family.

13. I am of the view that the application for grant of representation was irregular, there was non compliance with the requisite requirements leading to a number of irregularities, including subdivision, failure to give specific share to individuals leading to skewed distribution without considering the claim by the objector and other beneficiaries.

14. The most efficacious way of tackling the problem arising thereof from is;

a. To revoke the grant that was issued to the petitioner on the 30th of April, 1984 and confirmed on 3rd September, 1984.

b. To cancel all subdivision done subsequent to the confirmation and to have the title revert to its original number Ndivisi/Makuselwa/106 pending further orders of the court, which I hereby do.

c. I further order Status quo as relates to occupation of the subject property be maintained pending final orders.

d. All the 4 houses do appoint each one person who will become one of the four administrators of the Estate.

e. Costs to the applicant / objector.

f. Matter to be mentioned at a date to be assigned upon where names of the administrators will be given.

DATED and DELIVERED at BUNGOMA this 16th day of November, 2017

ALI ARONI

JUDGE