



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MERU
H.C SUCCESSION CAUSE NO. 371 OF 2013.

IN THE MATTER OF THE ESTATE OF THE LATE M'RIRIA M'THIRIBI alias M'RIRIA
M'THIRIRI – DECEASED

ZAKARIA MWENDA M'RIRIA.....PETITIONER

VS

JACOB KIRIMI RIRIA.....1ST APPLICANT

PETER MUTETHIA M'RIRIA.....2ND APPLICANT

RULING

ZAKARIA MWENDA M'RIRIA petitioned the court for Letters of Administration to the estate of the deceased herein upon the chief of Kithoka Location by a letter dated 5th November 2012 identifying him as one of the sons of the deceased. The Chief also identified Land Parcel No. Nyaki/Kithoka/2675 as registered in the names of the deceased and had no dispute.

The consent to making of grant was signed by every Bernard Kiogora M'Riria.

In form P& A 5 the petitioner listed 3 properties as registered in the deceased names as follows:

1. Nyaki/Kithoka/2674
2. Nyaki/Kithoka/2675
3. Nyaki/Kithoka/2678

All valued at Kshs 500,000/- by the time was filed on 3rd July 2013.

The deceased is shown in Certificate of Death No. 211617 dated 7th November 2012 as having died on 12th December 2009. Grant of Letters of Administration was made on 27th September 2013 to Zakaria Mwenda M'riria who filed application for confirmation of grant dated 14th April 2014 proposing mode of distribution of estate to;

1. Eunice Kaari Imathiu
2. Zakaria Mwenda M'Riria

3. Benard Kiogora M'Riria

4. Janet Kaguri.

By an application dated 18th March 2015 Jacob Kirimi Riria filed an application for revocation of grant made to Zakaria Mwenda M'Riria for reasons the petition was filed secretly without informing the other family members;

That the Petitioner did not seek to obtain consent of the applicant's Jacob and Peter Mutethia;

That the Petitioner didn't make a full disclosure of material facts to enable fair and just determination of the cause by the Honourable court.

The applicants in supporting affidavit claim to be beneficiaries to the deceased estate but have not given particulars of their relationship with the deceased in the affidavit.

In the application dated 20th March 2015 under section 47 and 76 of the Law of Succession Act and Section 68 of Land Registration Act 2012 Jacob Kirimi Riria sought that an order of inhibition issues for land No. Nyaki/Kithoka/2678 to restrain the Petitioners from selling land in question to the detriment of the applicants who risk being disinherited of their rightful share of the deceased estate.

In reply to the applications for revocation of grant Zakaria Mwenda M'Riria on 6th July 2015 opposed the application. He gave names of the children who survived the deceased at paragraph 4 of his Replying Affidavit 8 in number.

He deponed that in 1999 the deceased subdivided his parcel of land No. Nyaki/Kithoka/1290 into 5 portions of 1 acre each and shared out the portions as follows:-

- a) Nyaki/Kithoka/2674 – To Bernard Kiogora
- b) Nyaki/Kithoka/2675 – To Zakaria Mwende
- c) Nyaki/Kithoka/2676 – To Jacob Kirimi
- d) Nyaki/Kithoka/2677 – To Peter Mutethia being share of John Mubiri
- e) Nyaki/Kithoka/2678 – Deceased portion which was later to devolve upon Janet Kagiri the unmarried daughter

He said the 2nd applicant was able to obtain title into his name as per annexure ZM1 – copy of Green Card.

That the 1st Applicant opted to sell his portion and transferred directly to the purchaser one Daniel Mungania as per ZM2. He said due to financial constraints the rest of them were unable to have their portions registered unto their names. He said that parcel No. 2678 is meant for their unmarried sister Janet Kagiri and that applicants having already benefitted have no right to disinherit Janet Kaguri.

He said all family members were aware when he petitioned for Letter of Administration the applicants in submission argued that by leaving out names of the other children of the deceased in chiefs letter the petitioner/Respondent misled the court by withholding a fact that was material to the fair and just determination of the cause. For that reason the grant ought to be revoked and/or annulled.

It was the applications argument that Petitioners position that they had benefitted from deceased prior to his death didn't justify them being left out of the proceedings of the cause. It was applicant's plea that grant made to the Petitioners be revoked.

It is true that the Chief of Kithoka didn't give full list of the deceased dependants or surviving children. In his letter dated 5th November 2012 he only said that among the deceased is Zakaria Mwenda. He thus have Benard Kiogora signing form r.26 (2) – consent to making of grant.

When it comes to consent to mode of Distribution a 3rd person Eunice Kaari Imathiu is introduced as having consented together with Benard Kiogora.

In the distribution Janet Kaguri who had not featured anywhere is apportioned the whole of parcel No. Nyaki/Kithoka/2675. It is not explained who the 2 are in the estate.

In the Replying affidavit the Petitioners gives names of his brothers and sisters but Eunice Kaari Imathiu is not in the list and is therefore a stranger to the estate and not entitled to distribution of any portion.

It is apparent that the Petitioner left out 6 of his siblings in the administration of the estate. They ought to have given him consent to file petition as they stand in equal footing and are entitled to the deceased estate in equal priority with the Petitioner. Whether they benefitted during the deceased life was a matter that could have been resolved by them giving him consent to petition for Letters of Administration and thorough evidence of how they had benefitted inter vivos.

The Petitioner didn't file submissions as taken in the directions as the mode of canvassing the application for revocation of grant.

I do therefore find that the Petition was filed without sufficient proof that other beneficiaries and/or dependants were aware of the cause and was thus obtained fraudulently by failing to disclose material facts about the number of beneficiaries entitled to the estate.

Accordingly the grant issued herein and all consequential orders and transactions carried pursuant to the grant issued and confirmed on 27th November 2014 is hereby revoked and/or nullified. The Letters of Administration will however be issued in the names of Zakaria Mwenda M'Riria and Jacob Kirimi Riria who will either file joint application for confirmation proposing mode of distribution consented to by all other beneficiaries or where there is a dispute each to file separate mode of distribution accompanied with statements of beneficiaries for viva voce evidence to be adduced as to fair and just mode of distribution.

Orders Accordingly.

HON. A.ONG'INJO

JUDGE

Ruling Delivered, Dated and Signed in court on 16th day of November 2017.

In the presence of:

C/A:

Petitioner: N/A

Applicants: Both present

Notice to issue to beneficiaries of the ruling.

HON. A.ONG'INJO

JUDGE