



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**SUCCESSION CASE NO. 698 OF 2001**

**IN THE MATTER OF THE ESTATE OF FELIX MARTIN KIRETI MWANGOLA (DECEASED)**

**OWEN MWANGOLA.....1<sup>ST</sup> PETITIONER/APPLICANT**

**VICTOR MUGENDI ..... 2<sup>ND</sup> PETITIONER/APPLICANT**

**VERSUS**

**VALD MWAKIMA.....PROTESTER /OBJECTOR**

**RULING**

1. Felix Martin Kireti. The deceased in the succession cause hereinafter referred to as the deceased died on the 1<sup>st</sup> May 1986. The deceased died intestate and left the following persons surviving him.

- |                                |          |
|--------------------------------|----------|
| i. Selestinah Wawuda -         | Daughter |
| ii. Robert Mgahanga -          | Son      |
| iii. Mary Mshai Mwakio-        | Daughter |
| iv. Agnes Mgoi Mwakina -       | Daughter |
| v. Ben Michael Felix Mwangola- | Son      |
| vi. Magda Kighenda Wazome-     | Daughter |
| vii. Pheny Wakio Mkamba-       | Daughter |
| viii. Jennifer Mwangola –      | Daughter |
| ix. Victor Mugendi -           | Son      |
| x. Vald Mwakima –              | Son      |

2. On the 27/3/01 Vald Mwakima filed a petition for special limited grant for the purpose of extension of lease from the Government of Kenya in respect of parcel land known as L.R. 209/2490/57 and collection of rents in respect of the said property. The same was granted by the court on the 24/7/2003.

3. On the 26/9/2013 Owen Mwangola and Victor Mugendi Kireti filed an application under Section 47 of

the Law of Succession Act seeking, **“joint petition for letters of administration intestate by Owen Mwangola and Victor Mugendi Kireti of the estate of Felix Martin Kireti Mwangola (deceased) be granted.** This application was withdrawn vide a notice of withdrawal dated the 25/3/14. Subsequently on the 28/3/2014 Owen Mwangola and Victor Mugendi Kireti filed a petition for letters of administration intestate. In their joint affidavit dated the 13/8/2013 they listed the persons who survived the deceased together with the assets of the deceased as at the date of his death namely;

i.	LR no. 209/249050/57	25,000,000/-.			
ii.	Title No. Mbale/Mbale /785	10,000,000/-			
iii.	Plot No.	Wanganga	‘B’	Taita	Taveta
	1,000,000/-				

4. On the 28/4/2014 a citation to Vald Mwakima was filed by Owen Mwangola and Victor Mugendi. On the 18/7/2014 Vald Mwakima filed a replying affidavit and he states he is a protestor/objector.

5. On the 31/10/2014 Vald Mwakima filed the application dated 28/10/2014. It is brought under Section 47 of the Law of Succession Act Cap 160. He seeks that, the application for joint petition of letters of administration made by Owen Mwangola and Victor Mugendi Kireti be dismissed. That the special limited grant of letters of administration issued to Vald Mwakima on the 24/7/03 be confirmed to full letters of administration.

Various affidavits have been filed, to support the petition for Letters of Administration Intestate. The applicant’s filed a joint affidavit sworn by one Mwangola and Victor Mugendi Kireti in support of the same. To support the application dated 28/10/14 there is the affidavit of Vald Mwakima. There is also an affidavit of Magda Kigenda Wazome a beneficiary in the estate of the deceased. Vald Mwakima filed a response to Magda’s affidavit on the 14/7/2015. On the 20/11/15 the firm of Mwangi Associates filed a notice of appointment for an interested party/beneficiary known as Jennifer Mwangola. There is also the affidavit of Vald Mwakima filed on the 18/7/2014 as a protester/objector.

6. I have carefully read the affidavits filed by the parties in this matter. It is not in dispute that Vald Mwakima Magda and the 2 petitioners are siblings and beneficiaries to the deceased’s estate. It is also not disputed that Vald did obtain a special grant from the court on the 24/7/03. The said special limited grant of letters of administration was limited for the purpose of extension of lease from the Government of Kenya in respect of known as LR No. 209/2490/57 and collection of rent in respect of the said property. The same property is listed by 2 petitioners in their petition for grant of letters of administration and has an estimated value of 25 million. It is apparent from the year 2003 Vald has made no effort to petition the court for a full grant of letters of Administration. This has led to the petition filed by Owen and Victor. Owen is now deceased.

7. The contentious issue is who should administer the estate of the late Martin Kireti Mwangola who died on the 1/5/1986 some 30 years ago. Vald is of the opinion that as the last born he was left in charge. He has exhibited a letter allegedly written by their late father that he was left in charge of the property he sought an extension of lease. This is highly disputed hence the petition filed through Owen and Victor. Owen is now deceased. The only petitioner left is Victor. Victor is said to be living out of the country in Canada. How will he administer the estate whilst in Canada, a fact that is not disputed? He has not explained. Magda in her affidavit filed in court on the 28/5/15 broke her silence when she saw what was happening between her siblings. She has challenged the averments made by Vald on the mode of distribution. This is not a matter to be considered now or at this stage as there is still no administrator to the estate. She accuses Vald of mismanagement of the estate having obtained the limited grant and denies the letters written by the father. In her affidavit she depones that she has the authority of Victor and Benjamin and that she has also consulted her other siblings.

8. It is apparent that Vald seems to be on one side and the other siblings on the other side, so who should be appointed as administrator/s.? I have considered the petition filed in court by Owen now deceased and

Victor who is in Canada but has not deposed how he will administer the estate. To enable this family move forward in this matter I appoint **Robert Maghanga, Magda Kighenda Wazome and Vald Mwakima** to be the administrators. Although Vald has been accused of mismanaging the estate, it is important that he be appointed as an administrator so that he can account for the rents received from L.R 209/2490/57. The 3 administrators shall have a meeting with their siblings and gather the estate of the deceased whatever is left of it and file an application for grant once the petition is gazetted. To hasten the process they also discuss the mode of distribution. Vald Mwakima shall give an account to the 2 other administrators of the rents received from the time he got the special grant todate.

9. On the application dated the 28/10/14, I have chosen not to dismiss the application filed by Owen and Victor as the application was withdrawn through the notice filed in court on the 25/3/14. The 2 filed a petition for letters of administration on the 28/3/2014. On the special limited grant of letters issued to Vald Mwakima on the 24<sup>th</sup> July 2003 to be confirmed to full letters of administration it is my view that the law is clear. Section 54 provides that ***“the court may according to the circumstance of each case, limit a grant of representation which it has jurisdiction to make”***, such grants are issued for a limited action as sought by the applicant. Section 55 (1) provides that ***“no grant of representation, whether or not limited in its terms, shall confer power to distribute any capital assets constituting a net estate, or to make any division of property, unless and until he grant has been confirmed as provided by Section 71”***.

Section 51 provides the process of applying for a grant and Section 71 provides on how a grant can be confirmed, the law must be followed as laid down. I therefore dismiss the application dated the 28/10/2014. The administrators shall comply with the directions given by the court and take a mention date within 45 days from the date of this ruling for directions as this is a matter that has been in court for the last 15 years. No orders as to costs. It is so ordered.

Dated, signed and delivered this **26<sup>th</sup>** Day of **May 2016**

**R.E OUGO**

**JUDGE**

In the presence of:

.....**For The 1<sup>st</sup> Petitioner/Applicant**

..... **For The 2<sup>nd</sup> Petitioner/Applicant**

.....**The Protester /Objector**

**M/S Charity**

**Court Clerk**