



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MILIMANI LAW COURTS**  
**FAMILY DIVISION**  
**SUCCESSION CAUSE NO.126 OF 2005**

**IN THE MATTER OF THE ESTATE OF CROMWELL OLIVER MKUNGU (DECEASED)**

**BELINDA MKALUMA MKUNGUSI.....1<sup>ST</sup> APPLICANT**

**BETTY MKUNGUSI.....2<sup>ND</sup> APPLICANT**

**VERSUS**

**ROBIN MICHU.....1<sup>ST</sup> RESPONDENT**

**SERA MWANGOMBE.....2<sup>ND</sup> RESPONDENT**

**EVA W. MKUNGUSI.....3<sup>RD</sup> RESPONDENT**

**RULING**

1. Cromwell Oliver Mkungusi died testate on 2nd May 2004 at Ongata Rongai. He left a Will in which he appointed the respondents as joint executors. Grant of Probate of Written Will was issued to the respondents on 15th April 2005.

2. The 1st applicant is a daughter of the deceased by the 2nd applicant who is described as one of the wives of the deceased. They are beneficiaries of the estate of the deceased as per his Will dated 19/02/2002. The other beneficiaries named in the Will are: Rose Wawuda Jotham (mother of the deceased); Hellen Mlale Mkungusi (daughter); Eric Wanyoike (son); Faith Mwhaki Ngugi (grandchild); Ian Joseph Nganga (grandchild); Gladwell Mkungusi (former wife) and Eva Wanyika Mkungusi (wife and 3rd respondent). The applicants filed the current summons dated 1<sup>st</sup> May 2014 and amended on 4<sup>th</sup> March 2015 seeking the revocation of the grant issued to the respondents; order directing the respondents to produce a full account of administration of the estate of the deceased; an order directing the respondents to refund and pay the estate all the misappropriated properties. They also asked that they be issued with a grant of probate and that the executors be directed to apply for summons of confirmation of grant within 6 months or such other time as the court may deem fit.

3. Their application was premised on grounds that: the respondents as executors were misusing the assets of the estate thereby subjecting the same to waste; and the respondents have disposed of or intend to dispose of assets of the estate for their own personal benefit without considering the beneficiaries of the estate as well as failing in their duty to provide accounts of the estate. It was their case that the

respondents have generally neglected to administer the estate diligently and have been engaged in fraudulent acts concerning the estate. It is for these reasons that they sought the orders in the application.

4. The 2<sup>nd</sup> respondent swore two affidavits in opposing the application. A replying affidavit dated 4<sup>th</sup> July 2014 and a further affidavit dated 4<sup>th</sup> September 2015. She stated that she was a sister of the deceased and that the 1st applicant was indeed a daughter of the deceased while the 2nd applicant a former wife of the deceased. She, however, denied that the respondents had failed to diligently administer the estate as per the will of the deceased and gave an account how monies due to the beneficiaries were distributed in accordance with the said will. She further averred that the respondents and no intention to dispose of any assets of the estate and in particular L.R No.12992 Mkuki Ranch in which the deceased held shares, as the same was government land leased for 99 years. She stated that the respondents did not have control of the ranch for a period of 10 years due to constant threat from locals, some of whom were squatters and miners who had been in the ranch even before the death of the deceased. She asked that the application be dismissed as there was no evidence whatsoever to warrant replacement of the respondents as executors of the will and to appoint the applicants as administrators.

5. The parties agreed to file written submissions to dispose of the matter which I have duly considered. The main issue for determination is whether the grant of probate with will issued to the respondents on 15th April 2005 should be revoked. The applicants submitted that the same should be revoked as provided for under **section 76** of the **Law of Succession Act (Cap 160)** for reasons that:

a. ...

b. ...

c. ...

**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 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.....”**

6. The grant of probate with written will was issued to the respondents on the 15th April 2005. They have not applied for confirmation of the said grant since then. This is a ground for revocation. It should be noted that **section 71(1)** provides that the holder of any grant of representation shall apply for the confirmation of the grant after the expiration of a period of six months from the date of the grant or such shorter period as the court may direct under **subsection (3)**. It is also evident that the respondents have failed to produce to court an inventory or account of administration as required by the provisions of **section 83(e)** and **(g)**. This is another ground for revocation under **section 76(d)(iii)**.

7. However, I do not find that the allegations of intermeddling have been established. The evidence on record does not show that the respondents have either sold or misused the assets of the estate, or wasted the same. Evidence tendered shows that the respondents have, instead, severally sought the authorities to get squatters out of LR No. 12922 Taita Taveta owned by Mkuki Ranch in which the deceased had shares. That being the case, I make the order that within 30 days from today the respondents or any of them do file an application for the confirmation of grant of probate, and that along with the application they file an affidavit showing an inventory of account of the administration of the estate as required by **section 83(e)** and **(g)** of the **Act**. The applicants shall, thereafter, have 14 days to respond to the

application and inventory. The matter shall be mentioned on **1<sup>st</sup> August 2016** for further direction. I ask that, because this is a family dispute, costs do await the resolution of the dispute.

**DATED and SIGNED at NAIROBI this 9<sup>th</sup> day of JUNE 2016**

**A.O. MUCHELULE**

**JUDGE**

**DATED and DELIVERED at NAIROBI this 13<sup>TH</sup> day of JUNE 2016**

**W. MUSYOKA**

**JUDGE**