

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

SUCCESSION CAUSE No. 2079 OF 2015

IN THE MATTER OF THE ESTATE OF SIMON NJEHIA MUNDIA

RULING

1. On 28th June, 2016 the application dated 13th June 2016 was placed before me for confirmation of the grant herein counsel informed me that they had complied with the orders of 25th June 2016 and made provision for the two grandchildren. I was referred to a further affidavit sworn on 5th July 2016 by the administrator. Upon perusing the same I noted that Victoria Wanjiru Mundia and Joan Njeri Mundia had each been allotted 4.75 acres out of Laikipia/Nyahururu/8471. This would have brought them almost at par with the children of the deceased, all of whom were getting 4.4 acres out of the same parcel of land.
2. Being satisfied that the two grandchildren had been provided for, I proceeded to allow the application dated 13th June 2016 and to confirm the grant made on 17th December 2015, and to allow distribution in the terms set out in the affidavits in support of the application, sworn on 13th June 2016 and 5th July 2016, respectively.
3. A draft certificate of confirmation of grant was purportedly extracted from the orders of 6th July 2016. It was placed before me and I initially signed it in the belief that the same complied with the terms of the orders I had made earlier in the morning of 6th July 2016. However, on close scrutiny, I noted that it did not confirm with the said orders.
4. I noted that the draft certificate of confirmation of grant had allotted Victoria Wanjiru Mundia and Joan Njeri Mundia a property described as Laikipia/Nyahururu/8471, and not the asset that was in the proposal placed before me earlier on that morning, that is to say 4.75 acres each out of Laikipia/Nyahururu/8741. When I went back to the file to peruse the affidavit sworn on 5th July 2016, I noted that a piece of paper had been pasted over the original proposal which had given the two the 4.75 acres each, and replaced with another proposal giving them 4.75 acres jointly out of Laikipia/Nyahururu/8471.
5. The property allotted to the two granddaughters in the draft certificate of confirmation of grant does not appear to exist. Laikipia/Nyahururu/8471 does not appear in the schedule of the assets listed for distribution in the affidavit sworn on 13th June 2016 in support of the application. It is also not in the schedule of assets listed in the petition lodged in this cause on 21st August 2015. A bundle of copies of titles of properties registered in the name of the deceased are on record, but there is none relating to Laikipia/Nyahururu/8471.
6. I am satisfied that there was a tampering with the court record after I had made my orders on 6th July 2016, a doctoring to meet the whims of certain individuals. This is a clear assault on the integrity of the court process.

7. I have noted from the record that the two granddaughters are not biological offspring of deceased, but rather adopted children of the deceased's son. It would appear that there is a scheme by someone to exclude them from benefit. First by not providing for them at all, and secondly by allotting them a fictitious property.
8. The administrators herein, the administrator and their counsel, ought to understand that once an adoption order is made in respect of any child, such child acquires all the rights to inheritance and succession to the estate of their adoptive parents as would be the case if they were their natural or biological parents. That is the effect of Section 174 of the Children Act, Cap 141, Laws of Kenya. Such children should get their due, and it is the duty of the court to ensure that they do.
9. The integrity of the orders that I made on 6th July 2016 has been undermined by the subsequent events. In the interest of justice I do hereby set aside the orders made on 6th July 2016. The application dated 13th June, 2016 shall be heard afresh, in a sitting attended by all the beneficiaries, including Victoria Wanjiru Mundia and Joan Njeri Mundia.
10. It is so ordered.

DATED, SIGNED and DELIVERED at NAIROBI this 22ND DAY OF JULY, 2016.

W. MUSYOKA

JUDGE