



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

SUCCESSION CAUSE NO. 109 OF 2010

**IN THE MATTER OF THE ESTATE OF THE LATE KASOA NTHIWA alias MULI NTHIWA
(DECEASED)**

1. HENRY MUMBIKA KASOA

2. PIUS NTHIWA KASOA PETITIONERS/RESPONDENTS

VERSUS

MUTUA KASOAOBJECTOR/APPLICANT

RULING OF THE COURT

1. The **Notice of Motion** Application before the court is dated 20th December 2012 filed by the Objector who seeks the following orders:-

i. That the Grant of Probate issued to Henry Mumbika Kasoa and Pius Nthiwa Kasoa on the 21st day of April 2010 and or any grant that may have issued be annulled and/or revoked.

ii. That costs of this application be granted to the Applicant.

2. The application is premised on the grounds that the grant was issued on basis of fraud and that the full assets and the full lists of the beneficiaries was not disclosed.

3. The application is supported by the affidavit of **Mutua Kasoa** sworn on 20th December 2012. **Mr Kasoa** depones that he is the Applicant/Objector in this matter and hence competent to depone hereto, and that he is a son to the deceased who was married to three wives namely Nundu Kasoa, Mukulu Kasoa, Kavindu Kasoa who are alive except the 1st wife who is deceased. The two surviving wives of the deceased have priority to administer as per the law and that the Petitioners Henry Mumbika Kasoa and Pius Nthiwa Kasoa have an inferior interest to them. The grant of probate was sought secretly and documents forged and the issuance of the grant was done on falsehoods by the Applicants. The Applicant allege that his signatures in the consent to issuance of grant was forged and that of three others namely Veronica Mukenya, Mueke Kasoa, Mukulu Kasoa and the said consents are thus a nullity in law. Further the list of beneficiaries given excludes the names of two namely:

a. Koki Kasoa

b. Nzivo Kasoa (deceased) – (Son of the 2nd wife and survived by his wives and children namely: Kasendi Nzivo and Mutete Nzivo and therefore grossly irregular. The Applicant further states that the sub-division of the estate proposed is not equitable and excludes lands the deceased gave to

myself in his lifetime, and that the Applicants did not disclose the intent of the deceased in Probate and Administration Cause No. 25 of 1990 where the Applicant is the deceased.

4. The application is opposed by the Petitioners/Respondents vide a replying affidavit sworn on 19th February 2016 by the 2nd Petitioner on his own behalf and on the behalf of his co-petitioner. The Respondents' case is that the application herein is defective and is based on misconception of the law and should be struck out. The deponent states that this Succession Cause was filed in 2010 with full knowledge and consent of the Objector.

5. Parties filed submissions which I have considered. The issue I raise for determination is whether the grant of letters herein may be revoked.

6. This court notes that the Objector was once of the people who consented to the Letters of Administration being issued to the Petitioners. Now he alleges that his consent was forged. There is no way this court can authenticate his allegation. He further alleges that the full list of assets and beneficiaries was not disclosed. However, this court notes that the family is large and the Objector is the only person who is disgruntled. While there are technical and legal issues with this application which may cause the court to strike it out, including the fact that there is yet no "Probate" issued which should be struck out, this court is rather of the view that the parties shall be given a realistic chance to settle their disputes. The Applicant states that the full list of assets have not been disclosed; that the full list of beneficiaries is not given and that the distribution of the estate is not equitable. These are issues which can be determined without revoking the grant of Letters of Administration. While I dismiss this application I make the following orders:-

- a. The Objector shall avail to court the full list of all the missing assets of the estate.
- b. The Objector shall avail to court a full list of the beneficiaries left out of the estate.
- c. The Objector shall avail to the court the distribution mode he prefers.
- d. The Petitioners to apply for confirmation of the grant herein within 45 days.
- e. Orders (a), (b), and (c) shall be fulfilled on the date the **Summons for Confirmation of Grant** will be heard.

Orders accordingly.

Dated and delivered at Machakos this 12th day of October 2016.

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E. OGOLA

JUDGE

In the presence of:

Mr. Nthiwa for the Objector

Mr. Kituku for the Petitioner/Respondent

Court Assistant – Mr. Munyao