



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT CHUKA

HIGH COURT SUCCESSION CAUSE NO. 164 OF 2016

**IN THE MATTER OF THE ESTATE OF THE LATE M'IMANENE M'MBORI KENYAN -
(DECEASED)**

- AND -

MARY KAMBURA.....1ST PETITIONER

JULIUS NYAMU.....2ND PETITIONER

RULING

1. Before me is an application dated 24th July, 2014 for the revocation of grant made to the Petitioner on 27th February,, 2012 in Chuka SPMCC Succession Cause No.295 of 2011. The application also sought orders of inhibition of title Nos.Nkuene/U-Mikumbune/563 and Nkuene/Nkumari/38 and that Nkuene/U.Mikumbune/563 be included in the list of assets forming the estate. The grounds for the application were on the face of the summons as well as in the Supporting Affidavit of Mary Kambura. These were, inter alia, that; the Chuka Principal Magistrate's Court had no jurisdiction to determine the matter; that the proceedings were defective in substance; that the Petitioner had failed to include Nkuene/U-Mikumbune/538 as part of the estate. It was further alleged that the Applicant was a daughter of the late M'Imanene M'Mbari but had been excluded from the estate and that the proceedings were lodged and prosecuted secretly.

2. The Petitioner, Julius Nyamu Manene opposed the application vide his Replying Affidavit sworn on 1st July, 2015. He stated that he only came to know the applicant recently; that Nkuene/Nkumari/38 was purchased by his late father with one Julius Riungu that the said land was given to him by the deceased before he passed on; that he did not include Nkuene/Mikumbune/563 in succession cause because his mother is still alive and was the one entitled to bring the succession cause on it.

3. Although directions were made that the matter be determined through viva voce evidence, the counsels representing the parties indicated that the application be determined by way of submissions on record. Apart from the Supporting Affidavit and the Replying Affidavit, the parties filed other Affidavits which are on record and which the court has carefully considered.

4. At the hearing of the application, Mrs. Ntarangwi appeared for the Applicant whilst there was no appearance on behalf of the Petitioner. Mrs Ntarangwi submitted that the Chuka Principal Magistrate's Court had no jurisdiction as the properties are situated in Meru County; that the value of the properties exceeded the jurisdiction of that court; that the said court consolidated two succession causes for separate estates and issued a single grant and confirmed it. That after the grant was issued the Petitioner secretly

sold Nkuene/Nkumari/38 to a 3rd party and that her client was excluded from the succession cause.

5. This court has carefully considered the record. It is not disputed that the Applicant is a daughter of the deceased; it is also not disputed that she was not involved or consulted when the succession cause was lodged. She was left out at distribution. The Petition was filed on 26th September, 2011 and in Form No. P & A 5, the beneficiaries disclosed are Rebecca Ngeeta Manene (widow) and Jane Kanyonyi (Daughter). The only asset disclosed was Nkuene/Nkumari/38. Further, the Petitioner admitted that he had not included LR No.Nkuene/U-Mikumbune/563 on the grounds that since his mother is alive, she is the one who is to bring a succession cause on it. According to the certificate of search dated 17th July, 2013, that property is in the name of the deceased. There can never be two separate Succession Causes for the same estate. It was wrong to have excluded that property from the petition.

6. There were two other issues. In the petition, the value of the estate was disclosed to be Kshs.200,000/= (Two hundred thousand.) There was no dispute that the properties the subject of the estate are situated in Meru County and by virtue of section 48 of the Law of Succession Act, the Chuka Court did not have the geographical jurisdiction to entertain it. Finally, the record shows that on 27th February, 2012, the lower court curiously consolidated two succession causes for two separate estates (Succession Cause No. 171 of 2011 in respect of the estate of the late Julius Rungu Kiburu and Succession Cause No. 295 of 2011 in respect of the estate of the late M'Imanene M'Mbori), issued a grant to the Petitioner and one Grace Ncekei Riungu and thereupon confirmed the said grant. That was highly irregular.

7. In view of the foregoing, I find that:-

- a. the Chuka Principal Magistrate's Court did not have both pecuniary and geographical jurisdiction to entertain the matter;
- b. the proceedings were defective in substance,
- c. the grant was obtained by means of untrue allegation of fact, and
- d. the distribution was unfair.

8. Accordingly, that grant cannot stand. The grant issued to the Petitioner and Grace Ncekei Riungu on 27th February, 2012 is hereby revoked. A fresh grant hereby issued to Julius Nyamu Manene and Mary Kambura. Property LR. No.Nkuene/Mikumbune/563 is hereby included as part of the estate.

9. This being a family dispute, this court makes no orders as to costs.

It is so ordered.

Dated and delivered at Chuka this 13th day of December, 2016.

A.MABEYA,

JUDGE.