



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

SUCCESSION CAUSE NO. 574 OF 2013

IN THE MATTER OF THE ESTATE OF ISIKA MBIA (DECEASED)

NDANU MBIA *alias* NDANU MUTHUI SAA PETITIONER/RESPONDENT

VERSUS

ANNA MWINZIA OBJECTOR/APPLICANT

RULING

1. The submissions dated 5/8/2013 seeks orders that the grant of letters of Administration intestate issued to **KAMENE MBIA, NDANU MBIA** and **WAYUA MBIA** be revoked or annulled on the grounds that:
 - a. **The proceedings to obtain the grant were defective.**
 - b. **The grant was obtained fraudulently by making a false statement and/or concealment of material facts.**
 - c. **The grant was obtained by means of untrue allegations of fact.**
2. The application is supported by the affidavit of one **Anna Mwanzia** who has described herself as the Applicant. According to the Applicant, the grant of letters of administration was made to **Kamene Mbia, Ndanu Mbia** and **Wayua Mbia** in PMC Succession Cause Kitui No. 118 of 2011 on 2/4/2013. It is averred that the **widow** to the deceased, **Munzyu Isika**, and the **daughters** to the deceased, **Anna Mwanzia, Viata Isika** and **Belita Isika** were not disclosed to the court. It is further deponed that only one property, **Matinyani/Kalia 1502** was disclosed yet the deceased had other properties. A Copy of the Petition in SPC Succession Cause Kitui no. 88/2012 was also annexed.
3. The application is opposed. The Respondent **Ndanu Mbia** alias **Ndanu Muthui Saa** who has described herself as a sister to the deceased swore a replying affidavit. The Respondent's averment is that the deceased was survived by one wife, **Munziu Isika Mbia** and **three daughters** who include the Applicant herein. It is the Respondent's contention that she filed the petition for the grant of letters of administration pursuant to a citation in PMC Succession cause Kitui no. 118 of 2011 and subsequently filed SPMC Succession cause Kitui No. 88 of 2012. That the grant of letters of administration herein was issued and subsequently confirmed.
4. The Respondent further asserted that land parcels No. **Matinyani/Kalia 849 and 1502** were disclosed to the said Petitioners. That the Applicant herein was represented in the same Petition by **Mulinga Mbaluka** Advocates and was adequately provided for in the share of her mother, **Munziu Isika**.
5. Directions were given that the application to be heard by way of written submissions. The Applicant however did not file any. I have therefore considered only the submissions filed by the Respondent.

6. I have perused PMC Succession Cause Kitui No. 118/2011 and SPMC Succession Cause Kitui No. 25/2013 which were marked as withdrawn by the lower court for being duplex. I have also perused SPMC Succession Cause Kitui 88/12 wherein the grant issued to the Applicant was confirmed.
7. In the Petition in SPM Succession Cause Kitui No. 88/12 the widow and all the three daughters of the deceased were reflected as beneficiaries. The name of the Applicant was not reflected in the Chief's letter as a daughter to the deceased. That adds credence to the contention by the Respondent that the Applicant is not a daughter to the deceased. The Applicant's averments on her relationship with the deceased is vague. She has described herself variously as a daughter and as a sister to the deceased. The Applicant has also made another error in describing the grant as having been issued to **Kamene Mbia, Ndanu Mbia** and **Wayua Mbia** whereas the grant was issued to the Respondent, **Ndanu Mbia** alias **Ndanu Muthui Saa**.
8. Two properties were reflected in the petition. That is **Matinyani/Kalia 849** and **1502**. If the deceased left behind any other properties, the Applicant has not revealed the same.
9. With the foregoing, I find no merits in the application and dismiss the same with costs.

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B. THURANIRA JADEN

JUDGE

Dated and delivered at Kitui this 29th day of January 2015.

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B. THURANIRA JADEN

JUDGE