



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KISII**

**SUCCESSION CAUSE NO. 215 OF 2011.**

**IN THE MATTER OF THE ESTATE OF MUSA OMURWA(DECEASED)**

**MARY KEMUNTO.....1<sup>ST</sup> PETITIONER**

**FELIX MUSA.....2<sup>ND</sup> PETITIONER**

**VERSUS**

**IRENE KEMUNTO MUSA.....OBJECTOR/APPLICANT**

**AND**

**KENNEDY BOSIRE GICHANA.....INTERESTED PARTY**

**JUDGMENT**

1. This is an application by Irene Kerubo Musa dated 3<sup>rd</sup> October, 2011 against the petitioners Mary Kemunto and Felix Musa. The interested party in the estate through purchaser is Kennedy Bosire Gichana. The estate the subject matter of this succession case is the estate of Musa Omurwa who died on 28<sup>th</sup> September, 2010. The petitioners, Mary Kemunto Musa and Felix Musa, mother and son applied for the Grant of Letters of Administration which grant was confirmed on 20<sup>th</sup> September, 2011.
2. Letter on, by the above application Irene Kemunto Musa brings this application challenging this grant of Administration and wants the same annulled because the proceedings to obtain the Grant were defective and the grant was obtained fraudulently by concealment of material facts from the court. By her replying affidavit dated 3<sup>rd</sup> October, 2011 and filed in court the same day, she says:
  1. *She married the deceased on 4<sup>th</sup> June, 1996, see marriage certificate marked exhibit 1KM-1.*
  2. *Three issues of that marriage.*
  3. *There was no other legal marriage subsisting between the deceased as at the duration of their marriage.*
  4. *That when the petitioners took out the Grant of Letters of Administration in respect of my husband, Musa Omurwa, they did not disclose the same to her.*
  5. *The petitioners concealed material facts to the court, i.e. me as the lawful wife of the deceased and that part of the estate of the deceased had been purchased by one Kennedy Bosire Gichana and substantial payment thereof had been made, see exhibit 1KM-2.*
  6. *The proceedings by the petitioners were conducted in secrecy to deny the purchaser his interest in parcel No. Kisii Municipality/Block 1/120.*
  7. *The petitioner, Mary Kemunto Musa wrongfully took possession of my matrimonial home, Central Kitutu/Daraja Mbili/456.*

8. *The objector therefore for reasons above stated seeks the revocation of the said Grant issued to the Respondents/Petitioners.*
3. I have read the interested party's submissions. I have also read the legal authority of Mwirichia, Succession Cause No. 170 of 1994, of which the ruling was delivered on 27<sup>th</sup> July, 2005, at Meru by Hon. R.N. Sitati.
4. I have carefully considered the application, the pleadings on record and the provisions of section 76 of the law of succession Act. I have reached the conclusion that this application has merit. It is not in dispute that the petitioner Mary Kemunto Musa once co-habited with the deceased. It is not in dispute that she long separated from the deceased and in came Irene Kerubo Musa was solemnized her co-habitation into a statutory marriage.
5. Secondly, it is clear to me from the pleadings that the petitioners made fraudulent statement of concealment of material facts to the court, not only in relation to the existence of Irene Kerubo Musa and her children but also the existence of the interested party in the name of Kennedy Bosire Gichana. The proceedings were surreptitiously undertaken to defeat the cause of justice and deny other beneficiaries their birth right to inheritance of their husband and father's estate.
6. Accordingly, I do allow the application, I order that the grant of representation issued to the petitioners on 20<sup>th</sup> September, 2011 is hereby revoked and annulled. The grant of Letters of Administration intestate shall now be issued to the objector/applicant, Irene Kerubo Musa. The applicant shall have the costs of this application.
7. It is so ordered.

**Judgment dated and delivered at KISII this 23<sup>rd</sup> day of January, 2015.**

**C.B. NAGILLAH,**

**JUDGE.**

**In the presence of:**

No appearance for the petitioners

Bosire for the objector

Bunde holding brief for Momanyi for the interested party

Edwin Mongare Court Clerk.