



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MACHAKOS

SUCCESSION CAUSE NO. 856 OF 2010

IN THE MATTER OF THE ESTATE OF MUSYOKA TUVA (DECEASED)

PAUL MWENDWA NDILEI.....APPLICANT

VERSUS

TITUS MUEMA MUSYOKA.....RESPONDENT

RULING

1. The Grant of Representation to the Estate of **Musyoka Tuva** (deceased) was issued to **Titus Muema Musyoka** (Respondent/Administrator) on the 5th May 2010. The properties forming the estate of the deceased were identified:-

- i. Nzambani/Kyanika/578(0.7 Ha)
- ii. Mulango/Kyangunga/1637(3.0Ha)

which were distributed to the Respondent / Administrator who was identified as the sole beneficiary of the estate.

2. **Paul Mwendwa Ndilei**(Applicant) sought revocation of the grant for reasons of non-disclosure of material facts. **Dulu,J** granted that the order on the 27th March, 2012. It was further ordered that if parties failed to agree, true beneficiaries, assets and mode of distribution would be established by way of *viva voce* evidence. Consequently the matter was heard.

3. Evidence adduced by both the applicant and respondent established the fact that the deceased had two (2) wives namely; **Nzambali** and **Damaris Musyoka**. The respondent is the only son of **Nzambali** while **Damaris** had a daughter known as **Mary Musyoka** who is the mother of the applicant herein and **Stella Syokau**. The assets forming the estate of the deceased include ;-

- i. Mulango/Kyangunga 1637; and
- ii. Nzambani Kyanika/578.

Following confirmation of the grant that is since revoked the respondent had transferred **Mulango/Kyangunga/1637** to his son **Isaac Mwendwa** and subsequent to that a title deed was issued.

4. Pursuant to the order of the court by **Dulu,J** issues for determination are:-

- i. Who are the two beneficiaries of the estate?
- ii. What assets are subject to distribution?

5. As aforesaid the deceased had two (2) wives who had a child each, the **Respondent** and **Mary Musyoka** the mother of the Applicant and **Stella Syokau**. The deceased's assets were two:-
 - i. **Nzambani/Kyanika/578**, and
 - ii. **Mulango/Kyangunga/1637**.
6. The Applicant is a grandson to the deceased while the Respondent is his son. Both of them are therefore beneficiaries of the estate of the deceased. Due to the nature of their relationship the degree of inheritance must vary.
7. It has been alleged by the respondent that he purchased **Mulango/Kyangunga/1637** when the area was under adjudication and had it registered in the name of the deceased, his father.
8. He produced an agreement alleging that the deceased was a witness. He called **Priscilla Kavite** as a witness who described herself as the wife to the Vendor who sold the land to him.
9. The agreement for sale (TMMI) does not describe the subject matter. It is vague and contrary to the allegation by the respondent as averred in the affidavit of mode of distribution of the estate of the deceased where he claims that in 1973 it cost him Kshs. 550/=, the property he claims he purchased at the cost of the Kshs. **550,000/=**. Consequently, there is no sufficient evidence adduced to prove that the respondent purchased the property and caused it to be registered in the name of the deceased.
10. **Green cards** (PMN1 and PMN2) adduced in evidence by the applicant demonstrate that the two (2) properties were registered in the name of the deceased on 1st April, 1998 and 13th December, 1985, respectively. According to the law these properties are assets that form the estate of the deceased. These are the assets to be divided among the Respondent and Mary Musyoka equally. (See *MMM'm versus AIM [2014] eKLR; Section 40* of the *Law of Succession Act*).
11. I do note that the respondent had transferred part of the deceased's property to his son. The grant having been revoked, the title issued should have been cancelled.
12. In the premises, it is ordered that the deceased's property shall be divided equally among the children of the deceased. (**Titus Mwema Musyoka** and **Mary Musyoka**. Subsequently the Applicant and his sister **Stella Syokau** will share equally their mother's share.
13. It is so ordered

DATED, SIGNED and DELIVERED at MACHAKOS this 23rd day of JANUARY, 2015.

L.N. MUTENDE

JUDGE