

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUNGOMA

Probate And Administration Cause No. 233”A” Of 2010

IN THE MATTER OF THE ESTATE OF MAURICE SIMIYU MANDETI.....DECEASED

BETWEEN

POLYCAP MANDETIPETITIONER/RESPONDENT

AND

MANDETI SIMIYU.....OBJECTOR/APPLICANT

RULING

1. The objector Edward Mandeti Simiyu moved the court by way of summons under Rule 49 of the Probate and Administration Rules for grant of letters of administration, after the grant issued in the name of the petitioner Polycap Mandeti was revoked by this court vide a ruling dated 7th April 2014 following a successful application by the objector.

2. The objector had earlier sought for annulment of the grant that had been issued to the petitioner as a son of the deceased and having received the consent of the other survivors and the beneficiaries of the estate of the deceased herein Maurice Simiyu Mandeti. The court in its ruling annulled the said grant due to fraud and misrepresentation by the petitioner and another.

3. The effect of the annulment referred to above, left the estate bare with no administrator. In his application before court the applicant seeks for grant to enable the succession cause proceed to confirmation. In an affidavit sworn on 17th February, 2015, the applicant states that he is a son of the deceased; has the consent of the survivors of the estate totaling to 19 children and widow and he seeks to administer the estate pending distribution and confirmation of the grant.

4. In his affidavit against the application the respondent objects to the issuance of the grant to the applicant citing his interest in property no. Ndivisi/Muchi/4336, which he claims to have had in his possession since 1972, the same having been given to him by the deceased.

5. I understand the applicant to be seeking for a grant of representation as the son and an appointee of the immediate family of the deceased to administer the estate as there is no representative for now the court having annulled a grant initially issued to the respondent.

Whether or not the respondent is a beneficiary or of the estate can be canvassed at a later stage and more particularly at the point of distribution. It is not lost to this court either that the estate while in the hands of the respondent was about to lose part of the properties left by the deceased. For the said fact and for purposes of administration of the estate and there is a definite need to have an administrator in place to collect, preserve and administer the estate pending distribution of the same.

6. In this regard therefore the court hereby appoints Edward Mandeti Simiyu as the administrator of the estate of the late Maurice Simiyu Mwenduti alias Maurice Leo Simiyu.

Costs in the cause.

Dated at Bungoma this 22nd day of September 2015

ALI-ARONI

JUDGE.