



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
SUCCESSION CAUSE NO. 2327 OF 2011
IN THE MATTER OF THE ESTATE OF KAMAKYA MAINGI (DECEASED)

RULING

1. The deceased herein died on 6th October 2001. Representation to his estate was sought by Julius Nzomo Kamakya, herein described as the respondent, in his capacity as son of the deceased, in a petition lodged in court on 9th December 2011.
2. He was expressed to have been survived by a widow, Susan Ngina Kamakya, the applicant herein, and four (4) sons and three (3) daughters. The sons names were given as Julius Nzomo, Raphael Musyoka, Peter Munguti and Josephat Ngila. The daughters were listed as Monica Wavinya, Alice Ndinda and Ruth Nduume. He was expressed to have possessed a property known as Ithanga Phase II Plot No. 169.
3. A grant of letters of administration intestate was duly made on 10th May 2012 to the respondent.
4. On 17th January 2014, the respondent lodged an application in court, dated 14th January 2014, seeking confirmation of the grant made to issue and also orders to restrain named individuals – being the applicant herein and Raphael Musyoka, Peter Munguti and Josephat Ngila – with respect to activities that they were alleged to be carrying out on the estate property.
5. In the proposal, the estate was distributed between the widow and the four sons. The widow/applicant was allotted 2 acres, the respondent 11.2 acres, and the other sons – Raphael Munyika, Peter Munguti and Josephat Ngila – each got 3.6 acres.
6. The application for confirmation of grant was placed before Kimaru J. on 1st April 2014. The grant was confirmed in the presence of the parties to the instant application and that of Josephat Ngila, Ruth Nduume, Peter Munguti, Raphael Musyoka and Monica Wavinya. Distribution of the estate was ordered in terms of the proposals in the application.
7. On 17th April 2014 a Summons for Revocation of Grant was lodged at the registry, dated 15th April 2014. It was at the instance of the widow, raising three principal grounds – that distribution was inequitable, that some beneficiaries had been left out of the distribution and that the grant was confirmed fraudulently.
8. The applicant's main ground appears to be that one of her sons was dead. He was called Pius Wambua. He died in 1997. He had married Franscisca Kanini Kitonyo and they had five (5) children, who are named in the application. She has attached copies of her grandchildren's birth certificates. Her case is that the family of the late son was not included in the petition for grant of representation as well as in the distribution. She avers that she and her children had not consented in writing to the proposed distribution given the omission of the family of Pius Wambua and the

uneven distribution.

9. The respondent replied to the application *vide* his affidavit sworn on 19th May 2014. He does not deny the fact that the existence of Pius Wambua or his family, but says that his family should get 3.6 acres of the land. He has also endeavored to explain why he had allotted himself a share in the estate which is far in excess of what is allotted to his siblings.
10. When the matter was placed before Kimaru J. on 17th April 2014, the Judge ordered that the certificate of confirmation of grant should not issue pending the determination of the application.
11. The non-disclosure of the family of the late Pius Wambua alone is good ground for revocation of the grant made in this cause.
12. I note that the applicant is unhappy with the distribution proposed by the respondent and ordered on 1st April 2014. The distribution is, on the face of it inequitable. The explanations given by the respondent are not backed by any proof. The persons who allegedly bought some of the portions of the land in question are not named. There is no good reason given for the exclusion of the family of Pius Wambua from distribution. There is also no explanation as to why the three daughters have not been allotted shares in the estate, yet there is no evidence that they had renounced their entitlement.
13. The orders that I am disposed to make are as follows:-
 - a. **That I appoint Susan Ngina Kamakya as a co-administrator of the estate of her deceased husband together with the respondent;**
 - b. **That the grant herein made on 10th May 2012 shall be amended to reflect that appointment;**
 - c. **That the orders made on 1st April 2014 confirming the grant made on 10th May 2012 are hereby vacated;**
 - d. **That the new administrators shall apply for confirmation of the grant that I have made today in the next thirty (30) days of date hereof;**
 - e. **That the proposed distribution of the estate shall cater for all the survivors of the deceased – including his daughters and the family of Pius Wambua – except for those who may, renounce their right to a share in the estate; and**
 - f. **The applicant shall have costs of the application.**

DATED, SIGNED and DELIVERED at NAIROBI this 23RD DAY OF OCTOBER, 2015.

W. MUSYOKA

JUDGE