



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KITALE
SUCCESSION CAUSE NO. 217 OF 2014
IN THE MATTER OF THE ESTATE OF HEZRON WAMALWA SUMBULE
BETTY NANJALA WAMALWA
MOSES WAMALWA.....APPLICANTS
VERSUS
JOHN WERE CHIBAYWA W. SUMBULE
JAMES MAKOKHA WAMALWA SUMBULE....PETITIONERS

R U L I N G

Betty Nanjala Wamalwa and Moses Wamalwa, brought up the application on 27/2/2015 seeking revocation of Letters of Administration granted to John Were Chibaywa Wamalwa Sumbule and James Makokha Wamalwa Sumbule, on 11/12/2014.

The applicants allege in the application that the Petitioners/Respondents filed the cause fraudulently without consent of all the family members. Some of the said family members are said to have had their signatures forged, and were not made aware of the filing of the cause.

The petitioners, its claimed, have sold some part of the estate of the deceased without the consent of the beneficiaries and kept the proceeds to themselves. Its further alleged by the applicants that the petitioners left one beneficiary and added a stranger on the list of the beneficiaries.

The affidavit in support sworn by Moses Wamalwa, in paragraph 3 alleges that the applicants were not involved in filing of the cause and never gave consent. In paragraph 7 he discloses that the one beneficiary left out is Judith Wamalwa and the stranger listed is Rebecca Seiko. In paragraph 8 he suggest that since the deceased had four homes, each house should have contributed an administrator.

There were further affidavits sworn by Jedidah Mulongo Wamalwa, Betty Nanjala Wamalwa and Nafula Wamalwa. All alleges that they were never informed when the cause was filed by the petitioners, and never gave consent to it. They allege the signatures against their names in the consent form were forged.

On the above said reasons they urge this court to revoke the grant and appoint new administrators.

John Were Chibaywa Wamalwa Sumbule, in his replying affidavit disagrees with the applicants. He alleges in paragraph 5 and 6 that the beneficiaries were aware of the cause even before it was filed as the assets of the deceased had been distributed to them and had all been satisfied.

I have looked at the filed form 38 which is consent by the beneficiaries to the application of letters of the administration by the respondents. The three listed widows, namely Priscillah Nato Wamalwa, Jedidah Mulongo Wamalwa and Betty Nanjala Wamalwa had thumb printed. They have not alleged anywhere that the thumb prints do not belong to them, or were misled in doing so. There is no reliable evidence that the said thumb prints are a forgery. Therefore the allegation by Jedidah Mulongo Wamalwa and Betty Nanjala Wamalwa that they did not sign the form is unbelievable. Moses Wamalwa also appears to have put an impressive firm signature. He alleges its a forgery but adduced no evidence in support. Its hard to belief him. There are other many beneficiaries listed. Some have signed while others have their names hand written. They are not complaining that their signatures were forged and were not aware of the document. The allegation that many were not aware, by the applicants is not substantiated.

Moses Wamalwa alleges that a beneficiary, namely Judith Wamalwa was left out. However the said Judith Wamalwa is not herself complaining and has not sworn an affidavit.

My finding is that the applicants were aware of the cause and participated in it. They however appear to be dissatisfied with the way the estate is administered and the assets of the deceased distributed among the beneficiaries, but from the application they never came out clear on that. I find no strong ground to warrant revocation of grant awarded to the respondents on 11/12/2014. The application fails. Costs goes to the respondents.

Ruling read and delivered in presence of all the parties and Madam Munialo for the Applicants, this **28th** day of **October, 2015**.

S.M. GITHINJI

JUDGE

28/10/2015