



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITUI

SUCCESSION CAUSE NO. 197 OF 2015

IN THE MATTER OF THE ESTATE OF SUMBU NGOMO MWINZI (DECEASED)

BENEDETOR SYEVUTHA MBULI.....APPLICANT

VERSUS

SALOME KAINDI SUMBU.....ADMINISTRATOR/RESPONDENT

R U L I N G

1. **Benedetor Syevutha Mbuli**, the Applicant approached this court by way of summons for revocation/annulment of grant seeking orders that the grant of letters of administration made to the Respondent, (**Salome Kaindi Sumbu**) on **12th September, 2001** confirmed by the **Principal Magistrate** on **22nd August, 2002** in **Kitui Probate and Administration Case No. 43 of 2001** be revoked and/or annulled.
2. On interim basis she sought orders:
 - i. Preserving the Estate to prohibit the Respondent or any third party from disposing or transferring, possessing, occupying or in any other manner dealing with Land Parcel Nos. **Kyangwithya/Tungutu/28; Kyangwithya/ Tungutu/290; and Kyangwithya/Tungutu/300** (subject land) in the confirmed grant pending the hearing and determination of the application.
 - ii. Issuance of restraining orders from evicting her from the land.
 - iii. Prohibition of the Land Registrar from registering and dealing with the subject land.
3. The application is premised on grounds that: the grant was obtained fraudulently by concealment from the court of something material in respect of the Estate; the grant was obtained by means of concealment of an untrue allegation that was made in ignorance or inadvertently; the Applicant having an equal or prior right to a grant of representation in the case had not consented nor renounced her right to apply for a grant nor was she issued with citation to renounce her right; in distributing the Estate of the deceased, the Administrator/Respondent completely left out the Applicant and the Applicant was denied her right of inheritance.
4. The Applicant swore an affidavit in support of the application where she deponed that the deceased herein was her father-in-law having been married to **Mbuli Sumbu** his only son and the Respondent is her mother-in-law; the Respondent petitioned for letters of administration in respect of the Estate of the deceased comprising of the subject land without notifying her. She had seven (7) children with her deceased husband who are adults and are residing on the subject land but were not included as beneficiaries of the Estate of the deceased. The Respondent only took into account her co-wife, **Emily Katuki Mbuli** who similarly has 7 children.
5. Further, she stated that she learnt of the Probate and Administration Cause after she was sued together with her son in **Kitui Chief Magistrate's Court Civil Case No. 212 of 2013**, by her co-wife who sought an eviction order to issue against them from Land Parcel No.

Kyangwithya/Tungutu /28.

6. That the Respondent failed to disclose that she was one of the beneficiaries of the Estate of the deceased. She deliberately and fraudulently failed to get a letter of introduction from **Tungutu Sub-Location** where the deceased resided and was known to the **Assistant Chief of Utooni Sub-Location** who knew all beneficiaries and dependants of the deceased.
7. In her response to the application the Respondent refused to acknowledge the applicant as her daughter-in-law. She stated that her son **Fredrick Maurice/Morris Mbulle** died in 1997. He was married to **Emily Katuki Fredrick Mbulle** in church whom she recognizes as her daughter-in-law. Her son indicated **Emily Katuki** as her next of kin and the Applicant is a stranger to her.
8. The application was canvassed by way of *viva voce* evidence. The Applicant stated that she married **Mbuli** under the **Kamba Customary Law** who later married **Emily Katuki Mbuli**. They were blessed with children:
 - i. **Mutisya Mbuli**, a male adult who is married with children.
 - ii. **Mutie Mbuli** – A male adult who is married with children.
 - iii. **Musangi Mbuli** – A female adult with children.
 - iv. **Nzau Mbuli** – A male adult married but separated.
 - v. **Rose Mbuli** – (Deceased).
 - vi. **Munanie Mbuli** – (Deceased).

In her affidavit she listed three (3) others:

- **Festus Mbuli.**
- **Mwikali Mbuli.**
- **Mwangangi Mbuli.**

9. They live on their ancestral land, which she occupied with her husband having been given by the deceased. Her witness, **Telesia Kithi Musyoka** stated that **Sumbu** paid dowry in consideration of the Applicant; her second witness **Josephat Muthi Ndetei** a nephew of **Sumbu** stated that **Sumbu Mbuli** married the Applicant and they were blessed with children. Thereafter he married a second wife **Emily Katuki Mbuli**. All of them stay at the home of **Sumbu**.
10. The Respondent stated that the Applicant was not known to her as her only son was married to **Emily Katuki**.
11. On cross examination she denied knowing either the Applicant or her children but stated that she has sued them because they live on her land. She stated that the Applicant's children do not listen to her therefore she only recognizes **Emily Katuki's** children.
12. Submissions filed by the Applicant's Counsel have been considered.
13. **Section 76** of the **Law of Succession Act** stipulates thus:

“A grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by any interested party or of its own motion—

- a. *that the proceedings to obtain the grant were defective in substance;*
- b. *that the grant was obtained fraudulently by the making of a false statement or by the concealment from the court of something material to the case;*
- c. *that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently;*
- d. *that the person to whom the grant was made has failed, after due notice and without reasonable cause either—*
 - i. *to apply for confirmation of the grant within one year from the date thereof, or such longer period as the court order or allow; or*
 - ii. *(ii) to proceed diligently with the administration of the estate; or*
 - iii. *(iii) to produce to the court, within the time prescribed, any such inventory or account of administration as is required by the provisions of paragraphs (e) and (g) of section 83 or*

has produced any such inventory or account which is false in any material particular; or

e. *that the grant has become useless and inoperative through subsequent circumstances.*”

14. **Sumbu Ngomo Mwinzi** died on **25th August, 1990**. His widow, the Respondent herein petitioned for letters of administration of his Estate. The only names of persons surviving the deceased indicated on the affidavit in support of the Petition were herself and **Emily Katuki Fredrick Mbuli** who was described as a daughter-in-law. Assets left by the deceased were indicated as:

Kyangwithya/Tungutu/28

Kyangwithya/Tungutu/290

Kyangwithya/Tungutu/300

15. The grant of letters of administration intestate were issued in 2001. The grant was confirmed and the assets distributed as follows:

Emily Katuki Fredrick Mbuli – Kyangwithya/Tungutu/28

Paul Wambua Mbuli – Kyangwithya/Tungutu/290

Emily Katuki, Fredrick Mbuli & Salome Kaindi Sumbu - Kyangwithya/Tungutu/300

16. **Paul Wambua Mbuli** being one of **Emily Katuki**'s sons.

17. Evidence adduced established the fact that **Fredrick Mbuli** married **Emily Katuki** under **African Christian Marriage and Divorce Act** on the **4th October, 2009**. However evidence adduced that the Applicant resides in his ancestral home having married her under the **Customary Law** is not challenged. Despite her preference of **Emily**'s children, the Respondent acknowledges existence of the Applicant's children who reside on the subject land that was distributed. Their possessory rights over the land has been challenged by **Emily Katungi Fredrick Sumbi** who has sued them in a civil court seeking an eviction order to issue against the Applicant and one of her sons.

18. It is apparent that at the time of petitioning for the grant the Respondent concealed something material from the court. Having heard the Respondent she was adamant that the Applicant was a stranger to her. She concluded her testimony when cross examined by stating that she disregarded the Applicant's children because they were not communicating as they failed to listen to her. She acknowledged the fact that they have resided on the land since their childhood.

19. Evidence adduced by the Appellant proves that she cohabited with the son of the deceased herein prior to his demise and they were blessed with ten (10) children, three are dead but seven of them are surviving.

20. **Fredrick Sumbu Mbuli** having been the only son of the deceased was entitled to benefit from the estate of his father. Being deceased and having been polygamous all his wives and children have a right to benefit from his Estate.

21. It was therefore fraudulent on the part of the Respondent to have disregarded the Applicant with her children.

22. In the premises, it calls for revocation of the grant which I hereby do.

23. Parties concerned are directed to petition for a fresh grant of re presentation intestate.

24. It is so ordered.

Dated, Signed and Delivered at Kitui this 11th day of November, 2015.

L. N. MUTENDE

JUDGE