

NO. 270/2014

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

SUCCESSION CAUSE NO. 1075 OF 2011

IN THE MATTER OF THE ESTATE OF KIROTE OLE KAMUORO (DECEASED)

SIRINTAI ENE POLONET KUSOOBJECTOR

VERSUS

PAYIATON ENE KIONGA TUTAAPETITIONER

R U L I N G

1. The application dated **15th December 2011** is for revocation of a grant of representation issued to **Payiaton Ene Kionga Tutaa** and confirmed on the **3rd March 2011**. It is premised on grounds that the certificate of confirmation of the grant was obtained by fraudulent concealment of material facts; the Petitioner fraudulently presented herself as the wife of the deceased yet she is the wife of the deceased's brother, **Kionga Raurau Kamoro ole Tutaa** who sold the parcel of land known as **Kajiado/Dalalekutok/2965**; the Petitioner applied for the grant secretly even without the knowledge of her husband who on discovering filed an objection which was later withdrawn; the objector is an interested party in the land and did not know that this matter was in court until 21st October 2011; she has lived on the parcel measuring 10 acres since December 2003 and has developed it immensely hence should be included as a beneficiary of the estate.
2. In a reply thereto, the Petitioner states that the deceased was her husband. They had **three (3)** issues of the marriage. Prior to her marriage to the deceased, she was married to **Kionga Raurau Kamoro** with whom they had three children. She was chased away from the matrimonial home whereby she married the deceased who was allocated land **parcel No. 48** which later became **Kajiado/Dalalekutok/2965**.
3. She stated further that the estranged husband started claiming the property of the deceased and even brought in the objector his lover to try and push the real beneficiaries out of the parcel of land. After filing of the Succession Cause the former husband filed an objection which he later withdrew. She instructed the Land Registrar Kajiado to restrict her former husband from interference with the deceased's asset. The purported sale of land to the objector was intermeddling with the property of the deceased.
4. She concluded by stating that she was under no obligation to refund what her former husband fraudulently acquired from the objector as there was no connection between the objector and the beneficiaries of the deceased.
5. At the stage of application of a grant, the applicant is required to disclose the names of beneficiaries to the Estate of the deceased. In this case at the point of making the application the Petitioner did not give any names. Having thumb-printed on the form, it is evident that she is illiterate therefore it cannot be interpreted that she concealed the information as even her own name is not included.
6. A grant of letters of administration intestate was issued to the Petitioner on the **18th April 2007**. When she made an application for confirmation of the grant, all beneficiaries were stated. She was included as a dependant. The grant was confirmed and the only asset that formed the Estate of the deceased namely **Kajiado/Dalalekutok/2965** was distributed to the **Petitioner (wife to the deceased)** and **Lekayia Kionga (son to the deceased)**.
7. The deceased died on the **18th November 1999**. It is stated that in the year 2003, **Kionga Raurau Kamoro** a friend and neighbour to the applicant and also a husband (**or former husband**) to the

Petitioner who was not a dependant or administrator to the Estate of the deceased offered to sell part of the Estate of the deceased to the applicant. He purportedly received some **Ksh.16,000/=** from her and disappeared.

8. It is trite law that no person, even one with a temporary grant can interfere with the free property of the deceased person unless he/she is authorized by law. **(See Section 45 of the Law of Succession Act)**. The law criminalizes such an action. It was unlawful for such a person to have purported to dispose off the property of the deceased herein.
9. The applicant herein who has no relationship with the deceased cannot purport to have acted in good faith. Similarly she intermeddled in the Estate of the deceased.
10. This was a case of total intestacy; persons surviving the deceased would be his surviving spouse, children, parents, brothers and sisters who depended on the deceased. The applicant herein, a stranger does not fall into that category. In the premises she has no right to cause the grant to be revoked.
11. From the foregoing, the application lacks merit. Accordingly, it is dismissed with costs to the Respondent/Petitioner.

DATED, SIGNED and DELIVERED at MACHAKOS this 21ST day of MAY, 2014.

L.N. MUTENDE

JUDGE