



No.309/2014

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

SUCCESSION CAUSE NO 170 OF 2011

IN THE MATTER OF THE ESTATE OF **THOMAS KISENGA KATUMO (DECEASED)**

HENRY MULI KISENGA.....PETITIONER/APPLICANT

VERSUS

JAMES MUSAU KISENGA.....1ST RESPONDENT

BENJAMIN MAILU KISENGA.....2ND RESPONDENT

JACKSON MUSAVU KISENGA.....3RD RESPONDENT

ESTHER MUKULU KISENGA4TH RESPONDENT

RULING

1. The application dated **31st October, 2013** is brought pursuant to the provisions of **Section 47 and 76 (a) (b) (c) and (d) (i) and (ii)** of the **Law of Succession Act and rules 44** of the **Probate and Administration Rules**. It seeks orders;-

- a. **That** the grant of Letters of Administration made on the **26th day of November, 2012**, be revoked
- b. **That** costs, of the application be in the cause.

2. The application is premised on grounds that:-

- a. The application for the grant was obtained fraudulently by making false statement and concealing from the court some material facts to the case.
- b. The application for the grant was made by least suited person without necessary consent and/or citation to persons with equal or prior rights.
- c. The beneficiaries have no confidence at all in the person granted Letters of Administration who is troublesome and has already intermeddled with part of the estate.

3. In an affidavit in support of the application, **Esther Kisenge**, one of the applicants depones that the deceased was survived by;-

- a. Grace Wayua Kisenga -wife –(now deceased)
- b. Esther Mukulu Kisenga -daughter (adult)
- c. James Musau Kisenga -son (adult)

- d. Benjamin Mailu Kisenga - son (adult)
- e. Jackson Masavu Kisenga -son (adult)
- f. Mary Sukwaa Kisenga -daughter (adult)
- g. Agnes Kavi Kisenga – daughter (adult)
- h. Henry Muli Kisenga – son (adult)

4. Further, she states that on the **2nd March 2011**, the respondent, the deceased's last born without the consent of his siblings directly petitioned for Letters of Administration. Upon hearing of the Succession Cause they filed an objection to the making of the grant but it was said to be premature; subsequently letters of administration were issued to the respondent on **26th November, 2012**. The entire family has no confidence in the respondent running the estate for the deceased having not even obtained consent from persons who have an equal or prior right to the grant of representation issued.

5. In a reply thereto the respondent stated that it had not been shown that he concealed any facts or made false statements towards obtaining of the grant. He stated that prior to obtaining the grant he consulted his siblings who seemed disinterested. Only two (2) of his sisters executed the consent, failure to lodge an objection as required resulted into the Succession Cause being gazetted and the grant being issued. He called upon the court to disallow the application and to allow him file an application for confirmation.

6. Section **76 (a), (b) and (c)** of the **Law of Succession Act** provides 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.”*

7. Letters of Administration ought not to be granted to any applicant who does not notify every person entitled in the same degree or priority to him to the said grant (***see Rule 26(1) of the Probate and Administration Rules***). When the respondent petitioned for Letters of Administration he filed a consent to the making of the Grant of Administration Intestate to persons of equal or lesser priority. The form bears names of all his siblings. However, only two (2) names are written thereon. The applicant herein did not append their signatures. They have stated that they were not notified. The respondent argues that they were not interested. Other than the allegation, there is nothing to suggest that they renounced their right to apply for the same.

8. The applicants herein on discovery the step he had taken, immediately moved the court to have him barred from being appointed as an administrator. The court however noted that the objection was premature.

9. It is stated by way of affidavit evidence that the respondent, the youngest in the family is not a person of integrity. He cannot be entrusted with the running of the estate of the deceased. In his response the respondent did not specifically refute the allegation. The court has a duty of ensuring the deceased's estate is not wasted. In the premises a dispute having arisen, since **Rule 26** of the **Probate and Administration Rules** was not followed to the letter, it will be in the interest of justice to have the grant revoked.

10. In the result, acting pursuant to **Section 76 (a)** of the **Law of Succession Act**, I do revoke the **Grant of Letters of Administration Intestate** issued herein. Parties are directed to seek a further grant. Costs of the application shall be in the cause.

DATED, SIGNED and DELIVERED at MACHAKOS this 24TH day of JUNE, 2014.

L.N. MUTENDE

JUDGE