



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**MILIMANI LAW COURTS**

**FAMILY DIVISION**

**SUCCESSION CAUSE NO. 2777 OF 2008**

**IN THE MATTER OF THE ESTATE OF LABAN NJENGA MUNDIA (DECEASED)**

**ESTHER NJERI NJENGA.....PETITIONER/RESPONDENT**

**VERSUS**

**ALVIN KAMANDE NJENGA.....1<sup>ST</sup> APPLICANT/BENEFICIARY**

**DERRICK KARIUKI NJENGA..2<sup>ND</sup> APPLICANT/BENEFICIARY**

**RULING**

1. The deceased LABAN NJENGA MUNDIA of Kiambu died intestate on 9<sup>th</sup> November 2006 at Kenyatta National Hospital. He left a widow ESTHER NJERI NJENGA (the petitioner/respondent) who was appointed the legal representative of the estate. He was survived by four daughters, three sons and two daughters-in-law. The applicants ALVIN KAMANDE NJENGA and DERRICK KARIUKI NJENGA are two of the sons. The respondent filed an application for the confirmation of the grant that was issued to her. The application was allowed and certificate of confirmation issued to her on 10<sup>th</sup> November 2010. The property of the deceased, which included shares, money in bank and parcels of land, were ordered to be registered in the name of the respondent to hold in trust in equal shares for the beneficiaries. It is clear that the applicants did not participate in the application for confirmation. The record shows that on 26<sup>th</sup> March 2010 a consent on the mode of distribution of the estate was filed. All the beneficiaries, except the applicants, had signed. The applicants had not signed the consent that allowed the respondent to apply for the grant of letters of administration intestate.

2. On 24<sup>th</sup> November 2011 the applicants brought an application under **sections 3, 3A and 63(c) of the Civil Procedure Act** and **Order XL rules 1, 2 and 3 of the Civil Procedure Rules** seeking that the letters of administration be cancelled, and that the she be restrained from using such letters until the dispute was heard and determined. The main complaint was that they were beneficiaries who had not participated in the matter leading to the grant, despite there being an order that they be served. Further, that the estate had disputes which had not been settled. The disputes included **HCCC No. 512 of 2008** which was pending. It was stated that the case had been filed before the petition. The respondent filed a replying affidavit sworn on 8<sup>th</sup> August 2012 opposing the application. On 23<sup>rd</sup> January 2012 Justice G.B.M. Kariuki (as he then was) directed the applicants to swear and file a comprehensive affidavit within 14 days to support the application. The respondent was to file a response within 14 days of service. Parties were asked to come on 28<sup>th</sup> March 2012 for the hearing of the application. On 28<sup>th</sup> March 2012 the respondent attended with her advocate. The applicants did not attend. They had also failed to file and serve the affidavit as directed. Their application dated 22<sup>nd</sup> November 2011 and filed on 24<sup>th</sup> November 2011 was dismissed with costs for want of prosecution.

3. On 19<sup>th</sup> April 2012 the respondent filed an application for rectification of the grant. On 6<sup>th</sup> June 2012 the 1<sup>st</sup> applicant filed an application dated 5<sup>th</sup> May 2012 to have, among other things, the ruling delivered on 28<sup>th</sup> March 2012 reviewed and to have the application dated 22<sup>nd</sup> November 2011 restored. The

applicant had a litany of complaints, but what was important was his claim that on the date of hearing he had another matter before the Chief Justice. The other claim was that the replying affidavit sworn to oppose the dismissed application had not been served on him. The respondent replied to the application. Her case was that the application dated 22<sup>nd</sup> November 2011 had rightly been dismissed for non attendance, and that, in any case, the application had no merit since it contained no grounds for the revocation of the grant. Therefore that, no useful purpose would be served by the reinstatement of the application.

4. The record shows that on 21<sup>st</sup> June 2013 Justice Kimaru made the following orders:-

**“The applicant is advised to apply for the certificate of grant to be rectified so that the shares of the estate of the deceased that he says he is entitled to inherit is brought out in the same. The said application shall be filed within seven (7) days of today’s date and be served upon the respondent.”**

In my view, despite the fact of the dismissal of the applicants application dated 22<sup>nd</sup> November 2011, Justice Kimaru was willing to re-open the dispute to allow them to make their claim as beneficiaries (sons of the deceased). On 26<sup>th</sup> June 2013, the 1<sup>st</sup> applicant filed an application to have the grant issued to the respondent to be cancelled/revoked/annulled. The respondent filed a replying affidavit on 13<sup>th</sup> June 2014 to oppose it. The matter was listed for 8<sup>th</sup> April 2014 for directions to be given on the hearing of the application.

5. It follows that this Court erred when on 17<sup>th</sup> June 2014 it asked that the application dated 5<sup>th</sup> May 2012 be heard on 22<sup>nd</sup> June 2014. Indeed the parties argued that the application on 22<sup>nd</sup> September 2014 which led to the present ruling. The application dated 5<sup>th</sup> May 2012 was, as indicated in the foregoing, dealt with by the orders by Justice Kimaru which were issued on 21<sup>st</sup> June 2013. The application that ought to have been listed for hearing was the one filed on 26<sup>th</sup> June 2013. For this reason, I review the proceedings of 22<sup>nd</sup> September 2014 and set them aside.

6. It should be pointed out that, the applicants are the sons of the deceased and the respondent is their mother. They are basically complaining that the estate of their father was distributed without reference to them. That is a substantial complaint on which the Court directs that it be heard by oral evidence and the parties be allowed to call witnesses and to bring any documents that they may have. I ask that the Deputy Registrar gives them an early hearing date. I make no orders as to costs, but direct that there should be no further dealings with the properties of the deceased, even if they have been transferred, to await the resolution of the dispute.

**DATED and DELIVERED at NAIROBI this 26<sup>th</sup> November, 2014.**

**A.O. MUCHELULE**

**JUDGE**