



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 923 OF 2012

IN THE MATTER OF THE ESTATE OF RACHEL WAMBUI CHEGE (DECEASED)

MARY WAITHERA CHEGE.....1ST APPLICANT

PERIS NJERI KIARIE.....2ND APPLICANT

IRENE NGUHI CHEGE.....3RD APPLICANT

JOHN KIBAARA CHEGE.....4TH APPLICANT

HANNAH WANJIRU MWANGI.....5TH APPLICANT

VERSUS

EVANS MUTHEMBA CHEGE..... RESPONDENT

JUDGMENT

1. The deceased RACHEL WAMBUI CHEGE died intestate in Kiambu on 18th March 2011. **Succession Cause No. 131 of 2011** was filed at the Chief Magistrate's Court at Kiambu for the grant of letters of administration intestate. Those who filed were her sons JOHN KIBAARA CHEGE (the 4th applicant), PETER KARIUKI CHEGE and EVANS MUTHEMBA CHEGE (the respondent) and daughter in law ELIZABETH WANJIRU KINUTHIA. They were the only ones shown in the affidavit in support of the petition to be surviving her. The assets shown to have been left by her were KABETE/L/KABETE/2656, 2150, 2123, 2127, 2022, 1998, 2008, 2007, 2006, 2005, 2004, 2003 and proceeds in Post Bank A/C No. **[Particulars withheld]**. There were no liabilities. A grant was issued to the petitioner on 14th June 2011. On the following day an application was made to confirm the grant. On 30th July 2011 a certificate of confirmation of grant was issued in which the estate was distributed as follows:-
 - a. ELIZABETH WANJIRU KINUTHIA got parcels 1998 and 2003;
 - b. the respondent got parcels 2022, 2006, 2007 and 2008;
 - c. the 4th applicant got parcels 2127, 2005 and 2650; and
 - d. PETER KARIUKI CHEGE got parcels 2123, 2004 and 2656.
2. On 19th December 2011 the applicants brought this application under **sections 47 and 76** of the **Law of Succession Act (Cap 160)** to have the grant revoked. The 1st and 4th applicants swore affidavits to support the application. Their case was that, although they were children of the deceased, they had not been informed about the proceedings and that, except for the 4th applicant,

they had been disinherited. They stated that parcels 2007 and 2008 now registered in the name of the respondent had been left by the deceased to benefit all her children, including the applicants. The 4th applicant swore that, although he had been provided for in the distribution, he was not a party to the Cause and neither had he executed any documents in the matter.

3. The respondent swore a replying affidavit in which he admitted that the applicants were children of the deceased. He however, denied that he had excluded them in the Cause or that he had disinherited them. He stated that the 1st, 2nd, 3rd and 5th applicants were married and therefore not dependants of the deceased, although the deceased had given each a portion of land during her lifetime. He swore that there was family consultation and therefore it was not true that the applicants had been excluded from the matter. Nothing had been excluded from them, he said. Lastly, the respondent indicated that the deceased had specifically indicated that he would get parcels 2007 and 2008.
4. The advocates for the applicants and the respondent filed written submissions which I have considered.
5. This was an intestate Cause. It is clear that when the petitioners, including the respondent, filed it they swore an affidavit in which they failed to include the 1st, 2nd, 3rd and 5th applicants as the children of the deceased who had survived her. It was pointed out by the applicants' counsel, and that is the correct position of the law, that the petition was required to include the names and addresses of all the surviving children of the deceased. Under **section 51(2)(g) of the Law of Succession Act** a petition filed seeking grant of representation in case of total or partial intestacy shall include the names and addresses of all surviving spouses, children, parents, brothers and sisters of the deceased, and of the children of any child of the deceased. This is a mandatory requirement that was not complied with (**In the Matter of the Estate of MUIRURI MUCHORO (deceased)[2014]eKLR.**
6. Secondly, the applicants were entitled to be informed that proceedings had been filed to inherit their late mother, and their consent was required before any grant or distribution was done. Before the grant in this Cause was confirmed, the petitioners were required to satisfy the Court as to the respective identities and shares of all persons beneficially entitled to the estate (**Section 71(2)(d) of the Act**). The petitioners were supposed to indicate any gifts that the deceased had given to any of the beneficiaries before her death so that they be taken into account at the distribution (**section 42 of the Act**). **In the Matter of the Estate of DOTO OWINO (DECEASED) [2014]eKLR** it was held that:-

“The identities of the beneficiaries and their interests in the estate are material facts and once it is established that their interests are concealed, the grant of representation is flawed.”

7. In conclusion, I make the following orders:-
 - a. the grant of letters of administration intestate that was issued on 4th June 2011 and confirmed vide Certificate issued on 30th July 2011 by the Chief Magistrate's Court at Kiambu in **Succession Cause No. 131 of 2011** is revoked;
 - b. a grant of letters of administration intestate is hereby issued jointly to the 1st applicant MARY WAITHERA CHEGE and the respondent EVANS MUTHEMBA CHEGE;
 - c. the administrators shall within 30 days apply for the confirmation of the grant;
 - d. in the meantime, any transfer registered against parcels KABETE/L/KABETE/2006, 2007, 2008, 2123, 2004, 2656, 2127, 2005, 2650, 1998 and 2003 are cancelled and the parcels to go back to the estate of the deceased; and
 - e. costs of the application shall be borne by the respondent.

DATED and DELIVERED at NAIROBI this 21st November 2014

A.O. MUCHELULE

JUDGE