



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MILIMANI AT NAIROBI**  
**FAMILY DIVISION**  
**HIGH COURT SUCCESSION CAUSE NO.1501 OF 2001**  
**IN THE MATTER OF THE ESTATE OF DAVID MUTISYA USWII (DECEASED)**

**RULING**

1. A protest to the confirmation of the Grant in this cause was filed by

**Anne Mwikali Mutinda** and **Dennis Ngalu Mutisya** in their affidavits sworn on 4<sup>th</sup> September 2009 and 8<sup>th</sup> September 2009 respectively.

2. The deceased, David Mutisya Uswii, died intestate domiciled in Kenya on 26<sup>th</sup> August 1992. He left an estate and heirs. Messrs Beatrice Wanza Mutisya, Peter Musau Mutisya and Dennis Ngalu Mutisya were on 15<sup>th</sup> March 1993 appointed as administrators of the Estate, by dint of the Grant of Letters of the Administration intestate made to them on that date. This Grant was subsequently revoked by an order dated 16<sup>th</sup> July 2008 (issued on 28.7.2008) and another grant was made on 16<sup>th</sup> July 2008 to Peter Musau Mutisya, Dennis Ngalu Mutisya and Fidelma Mbithe Mwonga.

3. On 16<sup>th</sup> June 2009, the administrators of the Estate applied to have the Grant confirmed whereupon Anne Mwikali Mutinda and Dennis Ngalu Mutisya filed their respective affidavits of protest.

4. On her part, Anne Mwikali Mutinda, the widow of Mutinda Mutisya who was a son of the deceased, objected to the proposed distribution of the estate and in particular to Fidelma M. Mwonga holding any property in trust for the children of Mutinda Mutisya (deceased) who was one of the sons of the deceased in this cause or to her having any share in Matungulu/Sengani/328 which Anne Mwikali Mutinda contends is her and her children's home. Mr. Dennis Ngalu Mutisya on his part raised issues with regard to distribution of several properties comprised in the estate and objected to confirmation of the Grant.

5. Catherine Ndeiva Kaunga, a daughter-in-law of the deceased in this cause also filed an affidavit and objected to the proposed distribution of the estate on the basis that it is not fair.

6. Parties agreed to file affidavits and to have the issue of confirmation of the grant determined by the court on the basis of affidavit evidence and written submissions. The applicants (who hold the Grant of administration in this cause) filed detailed submissions dated 15.12.2010 and responded to the claims made by Catherine Ndeiva Kaunga, Anne Mwikali Mutinda and Dennis Ngalu Mutisya. With regard to Catherine Ndeiva Kaunga, the applicants pointed out that Catherine Ndeiva Kaunga had had distributed to her before the initial grant was revoked, the share of the deceased's estate which her late husband was entitled to. She took that share before the revocation

of the grant and sold her husband's share of inheritance. It is contended that she cannot now legitimately claim to be entitled to more from the estate and that her objection and claim are unjustified. As regards Anne Mwikali Mutinda's objections that Fidelma Mwonga should not hold any property in trust for the children of Mutinda Mutisya deceased; that Fidelma Mwonga should not hold Plot No.11798 in trust for the sons of Mutinda Mutisya deceased; that the said plot (No.11798) should be shared equally between his children namely Leonard Mutisya Mutinda, Kennedy Musyoki Mutinda and Gerald Uswii Mutinda as they have attained the age of majority; that Fidelma Mwonga should not have any share in Matungulu/Sengani 258 because it is the house of Anne Mwikali Mutinda and her children; that Fidelma Mwonga should not hold the KCB shares or land title No.Matungulu/Kyaume/1963 in trust for the children of Mutinda Mutisya (deceased) but Leonard Mutisya Mutinda should hold the same were all conceded and Fidelma Mwonga accepted the suggestions put forward by the applicant.

7. Fidelma Mwonga took the position with regard to Ann Mwikali that she (Fidelma) is entitled to the property known as Muka Mukuu 2151 and Plots 15 – 139. In addition, the applicant opined that Fidelma Mwonga should get a share in the property known as Matungulu/Sengani/258.
8. The applicant claimed that Dennis Ngalu Mutisya made a false affidavit but otherwise conceded that Plot. No 33 Tala Market should be shared between Dennis Mutisya and Anne Mwikali Mutinda.
9. On the basis of the affidavits and the submissions, the distribution that commends itself to the Court as being fair is that proposed in the application (dated 3.6.2009) filed in Court on 16<sup>th</sup> June 2009 for the confirmation of the grant subject to the following adjustments which are intended to achieve fairness having regard to the sentiments expressed by the beneficiaries:-
  1. ***Fidelma shall not hold plot No.11798 in trust for the sons of Mutinda Mutisya (deceased). Instead, the said plot shall be shared equally between the children of the said deceased – that is to say, between Leonard Mutisya, Kennedy Musyoki Mutinda and General Uswii Mutinda who have attained the age of majority***
  2. ***On item 5 of schedule "A", Fidelma shall not be entitled to inherit Plot No. Matungulu/Sengani/258.***
  3. ***In item 19 of Schedule "A" Fidelma Mwonga shall share equally***  
***Plot No.15 – 139 Muka Mukuu with the children of the late Mutinda Mutisya.***
  4. ***As regards item 14 of Schedule „A? Fidelma Mwonga's name shall be removed and shall be replaced with the names of Leonard Mutisya Mutinda who shall hold in trust for the children of Mutinda Mutisya (deceased)***
10. In item 17, the name of Fidelma Mwonga shall be removed and replaced with that of Leonard Mutisya Mutinda who shall hold in trust for the children of Mutinda Mutisya deceased. It is so ordered. Each party shall bear its own costs.

**G. B. M. KARIUKI, SC**

**JUDGE**

**Dated and delivered at Milimani Law Courts, Nairobi, on this 19<sup>th</sup> day of December 2014 by the Honourable Justice W. Musyoka on behalf of Justice G.B.M. Kariuki.**

**JUDGE**

**COUNSEL APPEARING**

*Mr. J. Makori for Mr. Orengo Advocate, of P. M. Malonza & Co. Advocates for Applicant*

*No appearance by or for the objectors Court Clerk – Prisca Kokani*