



REPUBLIC OF KENYA

IN THE HIGH COURT

AT EMBU

Succession Cause 268 of 2008

IN THE MATTER OF THE ESTATE OF SARAH MARA MUNYI - DSD

MARY WANJUE MUNYIPETITIONER/RESPONDENT

VERSUS

CATHERINE NJOKI NYAGA..... PROTESTOR/APPLICANT

R U L I N G

This is the application dated 9/12/2010 and filed on 11/1/2011 for revocation and annulment of grant under section 76(c) and (d) of the Law of Succession Act. It seeks orders;

- 1.To revoke the Grant of letters of administration in the Estate of SARA MARA MUNYI issued to MARY WANJUE MUNYI
- 2.The Applicant be appointed joint administrator of the estate of the deceased together with any other child of the deceased.
3. Costs of the application.

The main reason is that the Petitioner failed to disclose to the court that the deceased had a son called Benson Nyaga Munyi (now deceased) whose estate is administered by the Applicant who is his widow.

The Petitioner filed a replying affidavit. She states that she indicated in form P&A 5 the deceased persons surviving children who allowed her to file the petition.

The Applicant filed a further affidavit stressing her relationship with the deceased herein. Mr. Nyaga apparently filed no submissions.

M/s Rugaita for the Petitioner/Respondent filed written submissions.

I have considered all the material before me. The history of this matter as the record shows is that the Petition was filed on 29/7/2008. The normal processes were followed and the cause was gazetted on 13/3/2009, vide Gazettee Notice No.2517 and appeared on the Court's Notice Board from 13/3/2009 – 13/4/2009. A Grant was issued by this court on 14/4/2009.

The record has a consent Form 38 signed by the deceased's surviving children showing that they were in agreement that the Petitioner should file the petition.

The Applicant's husband pre-deceased the deceased herein, as he died in 1996. If indeed the late Benson Munyi was a son of the deceased then it means the Applicant is a daughter in-law to the deceased herein. Would she then have a better right above that of the deceased's own children in order for her to be made an administrator in his estate by this court?

As a daughter in-law subject to confirmation she would expect a share from the deceased's estate on behalf of her husband's estate. And that share can only come through the distribution of the estate. If her husband's estate is not considered then she has every right to protest. And that's why an administrator is expected to present a schedule of distribution accompanying the summons for confirmation to court. Already I can see from the schedule filed herein the Applicant's name is missing unless those of her children are there. Basically I see nothing wrong with the process of issuance of the Grant to the Petitioner to make me revoke or annul it. The best approach for the Applicant would be to file a protest to the confirmation so that the same is heard and the matter determined. Infact had she done that when she filed this application this matter would have been determined long ago.

The Applicant is therefore given 30 days to file the necessary protest documents and the matter fixed for hearing.

Otherwise the application 9/12/2010 and filed on 11/1/2011 is dismissed.

Costs in the cause.

SIGNED AND DELIVERED AT EMBU THIS 10TH DAY OF MAY 2012

**H.I. ONG'UDI
J U D G E**

In the presence of;

M/s Muthoni for Wairimu for Respondent/Petitioner

Petitioner – present