



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

SUCC. CAUSE NO. 232 OF 2010

IN THE MATTER OF THE ESTATE OF THE LATE M'ARIMI M'MBUI (DECEASED)

MARY NTINYARI M'ARIMI1ST
APPLICANT

BEATRICE KANANU M'ARIMI2ND
APPLICANT

VERSUS

MATHEW MUNGIIRIA ARIMI1ST
RESPONDENT

GABRIEL MUTUA2ND
RESPONDENT

JOSEPH KIBIA MUGAMBI3RD
RESPONDENT

JUDGMENT

Mathew Mungiiiria Arimi (Mathew) petitioned for grant of letters of administration intestate for this estate on 10th May 2010. He listed who survived the deceased as follows:-

- a) *Mathew Mungiiiria Arimi*
- b) *Andrew Mutethia*

- c) *Germano Murithi*
- d) *Julius Mutuluti*

- e) *Emilio Muthomi*
- f) *Charles Kiogora*

- g) *Mary Ntinyari*
- h) *Beatrice Kananu*

He listed in this petition parcel number *Ntima/Ntakira/2416* (suit property) as the only asset of the estate. He was issued with a certificate of grant on 26th October 2010. A summons dated 22nd February 2011 is now filed by Mary Ntinyari M'Arimi and Beatrice Kananu M'Arimi seeking revocation of the grant. The affidavit in support of that summons was sworn by Mary Ntinyari. She deponed that she, Beatrice Kananu and Charles Kiogora as children of the deceased were unaware that Mathew had filed this succession cause. She stated in her affidavit as follows:-

“That the 1st respondent (Mathew) did not obtain consent from myself and some of the other beneficiaries before he applied for letters of administration. I did not sign the consent that is filed in this honourable court and the 1st respondent forged my signature in order to acquire the grant secretly. “

Mary proceeded to state in her affidavit that Mathew had sold part of the suit property to two persons Gabriel Mutua and Joseph Kibia Mugambi. Her opinion of Mathew is to be found in her affidavit as follows:-

16. That the respondents are fraudsters and dishonest persons and we pray that the honourable court put an end to their illegal activities by allowing our application as prayed. That indeed the respondents are occupying our share of the estate to our decrement and we urge the honourable court to remove them from our share of the estate and indeed from the estate until this succession cause is heard and determined.

Mathew denied having sold the suit property in his replying affidavit. He deponed that he obtained “*blessings*” of the family members to petition for grant in this estate. He stated that Mary and Beatrice who are his sisters were married and could not therefore administer the estate because of their marital status. Mathew in his replying affidavit did not respond to the allegations that he forged the signature of Mary and other beneficiaries in the consent filed together with the petition. The fact that he did not deny the same must be taken to be true. Such a person is not a fit person to administer an estate. Further, it should be noted that Article 27 (4) and (5) the Constitution prohibits discrimination on the grounds of race, sex, pregnancy and marital status amongst others. It is therefore unlawful for Mathew to say that Mary and Beatrice cannot administer their father’s estate because they are married daughters. The court in this ruling will chose to be guided by section 66 of the Law of Succession Act Cap 160 which provides as follows:-

“When a deceased has died intestate, the court shall, save as otherwise expressly provided, have a final discretion as to the person or persons to whom a grant of letters of administration shall, in the best interests of all concerned be made but shall, without prejudice to that discretion, accept as a general guide the following order of preference –

(a) Surviving spouse or spouses, with or without association of other beneficiaries;

(b) Other beneficiaries entitled on intestacy, with priority according to their respective beneficial interests as provided by Part V;

(c) The Public Trustee and

(d) Creditors;

Provided that, where there is partial intestacy, letters of administration in respect of the intestate estate shall be granted to any executor or executors who prove the will.

I therefore make the following orders-

- 1. An order of inhibition is issued to be registered against parcel number Ntima/Ntakira/2416.***
- 2. The grant issued herein to Mathew Mungiiria Arimi on 26th October 2010 is hereby revoked.***
- 3. A grant shall be issued in the joint names of Mary Ntinyari M’Arimi and Charles Kiogora. Those administrators are granted leave to file for confirmation of grant notwithstanding that the 6 months period has not expired.***
- 4. The costs of the Summons dated 22nd February 2011 shall be paid to Mary Ntinyari M’Arimi and Beatrice Kananu M’Arimi by Mathew Mungiiria Arimi.***

Dated, signed and delivered at Meru this 18th day of May 2011.

**MARY KASANGO
JUDGE**