



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NYERI
SUCCESSION CAUSE NO.1050 OF 2009

IN THE MATTER OF THE ESTATE OF MUCHINA MURIUKI alias GABRIEL MUCHINA MURIUKI

AND

WANGUI MWANGI

KIBUI.....PETITIONERS

VERSUS

PETER

MACHARIA MUCHINA.....OBJECTOR

RULING

This ruling is the outcome of the summons for revocation of grant dated 7th June 2010 in which Peter Macharia Muchina the Objector /applicant herein, seeks to have the grant issued to Wangui Mwangi Kibui, the Petitioner /Respondent on 16th March 2010 to be revoked and or annulled. The summons is supported by the affidavit of the applicant. The Respondent filed a replying affidavit to oppose the summons. Parties recorded a consent order to have the dispute disposed of by affidavit evidence and by written submissions.

I have considered the grounds set out on the face of the summons plus the facts deponed in the affidavit filed for and against the application. I have further taken into account the rival submissions of learned counsel for the Respondents and those of the applicant in person. The main grounds argued by the applicant is that the applicant took out letters of administration without disclosing her intention to the other beneficiaries of the deceased's estate. The applicant further alleged that the Respondent had failed to disclose that the applicant was a beneficiary nor did she disclose the demise of Mary Njoki Muriuki,

who was their biological sister. It is said that the late Mary Njoki Muriuki was survived by children. The Respondent on her part was of the view that she caused a notice of her intention to succeed the deceased to be published in the Kenya Gazette and no objection was filed after the expiry of 30 days. The Respondent admitted that she did not include the name of late sister, Mary Njoki Muriuki, as a beneficiary because she had been fully provided for by the deceased intervivos. She averred that it is her and her sister Wachuka Gichohi Kamau who were the only beneficiaries entitled to inherit the remainder of the deceased's estate. She claimed that the applicant being the son of the late Mary Njoki Muriuki, should have waited until the time of confirmation of grant to lodge his claim if any.

After a careful consideration of the applicant's complaint, it has now emerged that the deceased had three children namely:

1. Wangui Mwangi Kibui
2. Mary Njoki Mwangi (deceased)
3. Wachuka Gichohi Kamau.

The Respondent admits she did not mention the name of Mary Njoki Mwangi, deceased as having survived the deceased. The evidence on record shows that the deceased died on 16th December 2003 while Mary Njoki Mwangi passed away on 9th May 2007. The question as to why the Respondent did not disclose to court that crucial fact is puzzling. The Respondent avers that she did not mention her sister's name as a beneficiary because she had already been provided for during the deceased's lifetime. Having come to the conclusion that the summons for revocation of grant has been proved, the other issue which has arisen is whether or not I should revoke the grant? If I revoke the grant, there will be considerable delay in finalizing the matter. The applicant's maintain contention is to be included as beneficiaries of the deceased's estate. The applicant and his siblings are saying they are entitled to share the deceased's estate. The Respondent on the other hand are saying that her deceased sister had been sufficiently been provided for by the deceased intervivos. I am clear in my mind that the above issues can be sorted when the grant comes up for confirmation hearing. Pursuant to the provisions of section 47 of the Law of Succession Act and rule 73 of the Probate and Administration Rules I decline to revoke the grant but direct the Applicants to be enjoined as a joint administrators with the Respondent. The duo should jointly or separately apply for the grant to be confirmed. Each party to meet his or her own costs

Dated and delivered this 15th day of July 2011.

J.K. SERGON

JUDGE

In open court in the presence of Mr. Ombongi h/b Karingithi for the petitioner and in the presence of the Objector.

J.K. SERGON

JUDGE