



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KAKAMEGA
Succession Cause 374 of 2001

IN THE MATTER OF THE ESTATE OF MULANDO MUSANGA ... DECEASED

A N D

ELIJAH HAMISI MWANJA PETITIONER

V E R S U S

DICKSON MASANGA OBJECTOR

R U L I N G

1. The deceased herein, Mulando Musanga died intestate on 14.2.1973. On 21.8.2001, one Elijah Hamisi Mwanja petitioned for a grant of letters of administration to his estate and named the following as the other persons surviving the deceased;

i) *Livingstone A. Amisi*

ii) *Bernard Hamisi*

iii) *Harrison Masanga*

iv) *Dickson Masanga*

2. The said Elijah Mwanja failed to disclose in Form P & A 5 how the above persons were related to the deceased but indicated that the only asset in the estate was land parcel No. **Butsotso/Shikoti/1767**. He clearly however named himself as a son and beneficiary of the deceased.

3. On 20.12.2001, a grant of letters of administration was made out to the said Elijah Hamisi but before the same could be confirmed, a summons dated 28.3.2001 was filed and it sought orders that the said grant be revoked for reasons inter – alia that;

i) *that Elijah was not a survivor of the deceased neither were Livingstone Amisi and Bernard Hamisi.*

ii) *that the said person (Elijah) failed to disclose that only Harrison Masanga and Masanga Mulando were the right persons to administer the deceased's estate.*

iii) *that Elijah's scheme was clearly directed towards disinheriting the rightful heirs of the deceased.*

4. Elijah Hamisi filed a Replying Affidavit on 18.2.2002 and deponed that the deceased was his father's brother and that the land comprised in the estate was held in trust for the larger family by the deceased. That the land was sub-divided in 1966 and that each of the families had its distinct and identifiable portions. That there is therefore no reason to revoke the grant as he is not a stranger to the estate and he is a fit and proper person to administer it.

5. During the hearing on 15.2.2010, Dickson Masanga, and Harrison Masanga gave evidence and all denied that Elijah Hamisi was in any way related to the deceased person herein and that he has no interest in the estate save that he wanted to take the sole asset comprised in it.

6. Section 66 of the Law of Succession Act, Cap 160 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 interest 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 proves the will.”

7. Reading Part V of the Law of Succession Act, it is clear to me that the sons of the deceased are higher up on the consanguinity list than his nephews so that even if I had to uphold Elijah Hamisi's claim, lawfully he cannot overtake the deceased's biological sons and administer his estate to their exclusion. Further, the said Elijah Hamisi initially named himself “a son” of the deceased but later back-tracked and claimed to be “a nephew” and also that his father was the deceased is “cousin”. Such a person who blatantly lies cannot expect the sympathy of this court, whatever the merits of his claim.

8. Section 76 of the Act also provides as follows;

“A grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decided, either on application by any interested party or of its own motion-

- (a) that the proceedings to obtain the grant were defective in substance;***
- (b) that the grant was obtained fraudulently by the making of a false statement or by the concealment from the court of something material to the case;***
- (c) that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant notwithstanding that the allegation was made in***

- ignorance or inadvertently;*
- (d) *that the person to whom the grant was made has failed, after due notice and without reasonable cause either-*
- (i) *to apply for confirmation of the grant within one year from the date thereof, or such longer period as the court has ordered or allowed; or*
- (ii) *to proceed diligently with the administration of the estate; or*
- (iii) *to produce to the court, within the time prescribed, any such inventory or account of administration as is required by the provisions of paragraphs (e) and (g) of section 83 or has produced any such inventory or account which is false in any material particular; or*
- (e) *that the grant has become useless and inoperative through subsequent circumstances.”*

9. Again, applying the above provisions to this case, the said Elijah Hamisi is guilty of concealing material facts and this is a fit case for the grant issued to him to be revoked.

10. In the event, the grant issued on 20.12.2001 to Elijah Hamisi Mwanja is hereby recalled and revoked and the Application dated 28.3.2002 is allowed in those terms.

11. Costs shall be in the cause

Orders accordingly.

Delivered, dated and signed at Kakamega this 15th day of April, 2010

ISAAC LENAOLA

J U D G E