



## REPUBLIC OF KENYA

### IN THE HIGH COURT OF KENYA

#### AT KERICHO

#### Succession Cause 1 of 2007

1. Family Law
2. The law of succession Cap.160 laws of Kenya
  - a) Revocation of grant.
  - b) Deceased male adult aged 80 years old on 5<sup>th</sup> May 2003, at Siloam Hospital, Kericho. Cause of death Cardiopulmonary arrest due metastatic cancer prostate due to anaemia.
  - c) Assets 127 acres of land and 50 cows.
  - d) Survivors; 4 widows, sons and daughters.
  - e) 3 widows apply for grant of letters intestate.
  - f) Eldest widow left out with no participation.
  - g) Eldest widow files application for revocation or annulment of grant.
  - h) P&A 70 issued by Deputy Registrar.
  - I) Koskei & Associates advocate filed first application 6.6.06 notice of appointment dated 5.6.06 irregular.
  - j) C. O. Nyamwange & Co. Advocate for objector.
  - k) Motanya & Co. Advocates for petitioner/applicant but never on record.
  - l) Kenya gazette 19<sup>th</sup> June, 2006 (D. W. Nyambu in Bomet).
  - m) Correct procedure; objection proceedings under Rule 17 and not under revocation proceedings.
  - n) No letters of grants to have been issued.
3. Parties agree all 4 widows apply jointly and severally for letters of grant.
4. Held.
  - i) Issue of representation requires to be sorted out.
  - ii) Fresh application be filed by all 4 widows jointly and severally naming all survivors sons and daughters. Age to be disclosed.
  - iii) Revocation proceedings struck out as being premature.
5. Case law - Nil
6. Advocate

J.M. Motanya advocate instructed by M/S Motanya & Co. advocates for the Petitioner

IN THE MATTER OF THE ESTATE OF KIPKURUI MIBEI – DECEASED

AND

MARY C. MIBEI	-	1 <sup>ST</sup> PETITIONER
ELIZABETH MIBEI	-	2 <sup>ND</sup> PETITIONER
GRACE MIBEI	-	3 <sup>RD</sup> PETITIONER
TERESIA MIBEI	-	4 <sup>TH</sup> PETITIONER

#### RULING

##### NO.1

#### I. Procedure

1. When the deceased passed away at the age of 80 years old on 5<sup>th</sup> May 2003 at Siloam Hospital, Kericho, having died of cardiopulmonary arrest due to metastatic cancer prostate due to anaemia; three of his four widows petitioned for grant of letters intestate on 6<sup>th</sup> of June 2006.
2. The remaining widow did not take kindly to this as she was never involved nor notified that the grant was being applied for. She was being left out of the whole estate yet she was the eldest widow. She applied for revocation

of grant on the grounds that the forms used to apply contained irregular information. She wished for the grant to be revoked.

3. As a matter of course the registry through the deputy registrar issued irregular form P&A 70 for directions before court. An attempt by the applicants to file injunction proceedings failed to materialize.
4. When parties appeared to court 2<sup>nd</sup> December, 2009 they notified the court they wish to have all four widows petition for grant of letters intestate on the deceased's estate.

## **II. Directions**

5. To set the record straight in this file a few anomalies require to be looked into. The first is the issue of representation. The petition filed their papers through M/S Koskei & Associates Advocate on 6<sup>th</sup> June, 2006. The notice of appointment did not comply with form P&A 63 where the parties appoint persons. The proceedings with the three widows reached the stage where the Kenya gazette Notice had appeared. This gives any person opposed to letters being taken to file objections under rule 17 of the Probate and administration rules. Instead M/S C. O. Nyamwange & Co. Advocate filed revocation proceedings instead of objection proceedings as to who has a right to take up the grant as administratrix.
6. For unexplainable reasons M/S Motanya & Company Advocates files injunction proceedings. There is no such provision under the law of succession. This takes on a different format available to parties. M/S Motanya & Co. Advocates are not on record. It therefore means that what ever papers filed herein are a nullity and expunged from the records.
7. The proceedings for revocation of grant by M/S C. O. Nyamwange & Co. Advocate cannot remain on record because no grant has been issued. There is therefore nothing to revoke.
8. My directions are that leave be and is hereby given for the four widows to be the four co-administratrix to estate of the deceased. They are to file new forms P&A **80, 11, 12, 57, 5** together with consents from survivors for taking on the estate P&A 38 a new Kenya Gazette Notice is to issue and be published having the 4 widows names.
9. It is noted the assets of the deceased is 127 acres of land and 50 cows. That each house has sons and daughters. Their names ages and actual relationship to the deceased must be clearly mentioned in form P&A 5. This should not include anyone who is not a survivor to the deceased for purposes of distribution of the estate.
10. The costs will be on the estate.

**Dated this 7<sup>th</sup> day of November 2009 at Kericho.**

**M. A. ANG'AWA**  
**JUDGE**

### **Advocate**

J.M. Motanya advocate instructed by M/S Motanya & Co. advocates for the Petitioner