



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT EMBU

Succession Case 324 of 2005

IN THE MATTER OF THE ESTATE OF EVARISTUS NJAGI MUGO....DSD

1. VIRGINIA WAMBUI MBURU.....1ST APPLICANT
 2. ROSE KAIGONGI KIENJEU.....2ND APPLICANT
- VERSUS**
1. REBECCA NDUKU DAVID.....1ST RESPONDENT
 2. JACKSON MURIUKI MUGO.....2ND RESPONDENT

RULING

Summons for revocation of a grant issued to Rebecca Nduku David and Jackson Muriuki Mugo is filed by Virginia Wambui Mburu and Rose Kaigongi Kienjeu.

On the ground that the grant was obtained fraudulently and by concealment of something material to the cause.

The grant was obtained by means of untrue allegation of facts essential on a point of law to justify the grant.

That Jackson Muriuki Mugo is not a beneficiary and cannot be named as a co-administrator of the deceased estate and that there were two wives (the applicants) who should be co-Administrator with Rebecca Nduku David. The deceased was also survived by other children namely:-

1. Fednard Mugo Njagi.
2. Jackson Mutuma Njagi
3. Alois Nyaga Njagi
4. Benson Mburu
5. Boniface Gichunga.

The application is supported by affidavit showing that the petitioner omitted to include some of the beneficiaries (children of deceased) and the two wives. And that co-administrator Jackson Muriuki Mugo is not in preference in the list of preference as indicated under section 66 of Succession Act. The petitioner did not inform the applicants of the application for a Grant of Administration. In her affidavit the petitioner's asserts that she and her children are the only survivors of the estate of deceased. The applicants were only friends of deceased. The Co-administrator says he is the brother of deceased and that the deceased never celebrated any marriage with any of the applicants and he was

included in the estate because of the minor children of his brother. There is evidence that the deceased declared the first applicant as his spouse and listed the names of his children including:-

1. Fednard Mugo
2. Jackson Mutuma
4. Benson Mburu
5. Boniface Gichunga.

It is stated that the Respondent Rebecca Nduku had not given birth to any children with deceased. There is exhibited birth certificate which show that the children are of the Applicants.

I have considered the evidence of all the parties. It is clear that the deceased regarded the first applicant as his principal wife. She bore him children. The second applicant also borne him children. It is clear then that the chief's letter of the chief dated 26/9/2005 was false. The petitioner was not the only wife and the three children stated in that letter were not born by her. She was silent as to the identities of their mothers.

It is my finding that the petitioner proceeded to obtain the grant of Representation of the estate of deceased fraudulently without disclosing all the facts concerning matters material to the case. The grant is hereby revoked. A grant shall issue to the three widows of deceased who shall jointly administer the estate of the deceased.

It is so ordered.

Dated this 12th March, 2008.

J. N. KHAMINWA
JUDGE

12/3/2008
Khaminwa – Judge
Njue – Clerk
Petitioners present in person
N/A for Protesters
Read in open court.

J. N. KHAMINWA
JUDGE