

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)

Succession Cause 1907 of 1996

IN THE MATTER OF THE ESTATE OF FRANCIS MAINA KWEHERIA - DECEASED

RULING

The grant of representation dated 19th November, 1996 was confirmed on 11th July, 2006. The beneficiaries shown in the Petition as well as in the confirmed grant are two widows and sons.

Thereafter the Applicant, Beatrice Nyambura Maina filed the summons for revocation dated 31st August, 2006.

There is no response to the said summons by the Administratrix even on the date of hearing of the summons, although the Respondents were properly served through their Advocates.

The directions to hear and determine the summons by oral evidence was granted on 11th July, 2007.

The Objector testified that she is an unmarried daughter of the deceased from the elder co-wife. The Respondents neither consulted her nor took her consent before filing the petition for grant of representation or for confirmation of the said grant.

She also averred that she occupied a portion of the estate property, namely L.R.Muguga/Kanyariri/32 during the life time of the deceased until August, 2007 when she was chased away by her brothers. She claims that she is entitled to the share of the estate being a child of the deceased.

Her claim is neither denied nor her exclusion explained.

In view of the uncontroverted facts, and considering provisions of Section 76 of the Law of Succession Act (Cap 160) and Rule 40(8) of the Probate and Administration Rules, I do find that the confirmed grant is defective and has been obtained by concealment from the court of the material fact (the existence of female children and specifically that of the Applicant).

I thus revoke the grant of representation and consequently the confirmed grant specified hereinabove.

The costs of this summons to the Applicant.

I further direct that a fresh grant be issued in the names of the Administratrix and Applicant and summons for confirmation be filed to include all the beneficiaries.

Dated and signed at Nairobi, this 13th day of May, 2008.

K.H. RAWAL

JUDGE

13.5.08