



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

Succession Cause 1958 of 2003 & 1781 of 2004

**IN THE MATTER OF THE ESTATE OF: KAMUYU NGANGA WAWERU
ALIAS PETER NGANGA KAMUYU ALIAS KAMUYU NGANGA (DECEASED)**

AMOS NGANGA KAMUYU.....OBJECTOR/APPLICANT

VERSUS

ESTHER KARURA KAMUYU.....PETITIONER/RESPONDENT

AND

ESTHER KARURA KAMUYU.....OBJECTOR/APPLICANT

VERSUS

AMOS NGANGA KAMUYU.....1ST PETITIONER/RESPONDENT

ESTHER KARURA KAMUYU.....2ND PETITIONER/RESPONDENT

RULING

There are two Summons for revocation or annulment of grants of Letters of Administration intestate of the estate of Kamuyu Ng'ang'a Waweru alias Peter Ng'ang'a Kamuyu alias Kamuyu Ng.ang.a (deceased). The first Summons appears to have been filed by Esther Karura Kamuyu who is said to be the third and only surviving wife of the three wives of the deceased.

There is no dispute that the said Esther Karura Kamuyu petitioned for and obtained a Grant of Letters of Administration in Nairobi High Court Succession Cause No. 1958 of 2003. It was confirmed and certificate of confirmation of Grant dated the 24th day of January, 2005 was issued. In it all the estate of the deceased goes to the said Esther Karuri Kamuyu as the only widow as a tenant for life and trustee for the children of the deceased as tenants in common in equal shares, absolutely. The children named therein are twelve in number.

The Summons for revocation against the confirmed grant of Letters of Administration was filed by one Amos Ng'ang'a Kamuyu who is the elder son of the deceased from one of the deceased's elder wives of the deceased. His grounds for seeking revocation are that Esther Karuri Kamuyu fraudulently obtained the grant in so far as she failed to disclose the fact that she was only one of the three wives of the deceased whom she failed to list as the survivors and probable beneficiaries of the deceased. Indeed in

his supporting affidavit to the summons for revocation the said Amos Ng'ang'a Kamuyu, the Objector in the said summons, pointed out that the survivors and beneficiaries named by the said Esther Karuri Kamuyu in the said Succession Cause No. 1958 of 2004 were only children. That she excluded the deceased's children from the other two wives now deceased. To the same supporting affidavit is annexed a letter from the Chief of Karai Location from where all the parties hail and upon whose earlier similar letter, Esther Karuri Kamuyu had relied to file the petition for the grant. This letter confesses that the earlier letter was misleading in so far as it had not included the fact that the deceased had two other wives besides Esther Karuri Kamuyu and in so far it had failed to include all the people entitled to benefit from the distribution of the estate.

This would also mean that Esther Karuri Kamuyu had not obtained the consents of other persons entitled to representation of the Grant of letters.

The Summons for revocation were due for hearing on 21.11.07. A hearing notice was apparently served upon Muhuhu & Co. Advocates who appear on record as representing the Respondent, the said Esther Karuri Kamuyu. There being found no reason for the failure to attend court by the said Respondent and their advocates, the court allowed the objector to proceed notwithstanding the absence of the Respondent. The Objectors advocates, M/s D.K. Thuo & Co. informed the court that the Revocation Summons in Succession Cause No. 1958 of 2003 had been consolidated with another Summons for Revocation in Nairobi High Court Succession Cause No. 1791 of 2004 whose content I now turn to.

Succession Cause No. 1971 of 2004 aforementioned was apparently filed by Amos Ng'ang'a Kamuyu. He included Esther Karuri Kamuyu as co-petitioner. The children of the deceased, apparently from the three wives appear to be included. A grant of letters of Administration intestate was issued on 25.8.2004 but has never been confirmed because of the confusion that arose due to double representation.

Further perusal of the file confirms the fact that this file was ordered to be consolidated with Succession Cause No. 1958 of 2003 with a view to find a joint resolution be found. That is why the two consolidated succession cause were fixed for a hearing on 21.11.07 when Esther Karuri Kamuyu and her advocates M/s Muhuhu & Co. decided not to attend court despite having been served with a hearing notice on. The result was that Amos Ng'ang'a Kamuyu and his advocate were allowed to proceed.

I have examined the material before me with close scrutiny. I find that it would have been fair and just on the death of the deceased that his estate be administered by a person(s) accepted by all the dependants of the deceased. In this case, the deceased had three wives of whom two had died leaving the surviving one, Esther Karuri Kamuyu. To properly petition for a representation she required the consent of all the adult children of the other two wives or houses. The evidence on the record shows that she obtained and confirmed a grant of Letters of Administration in Succession Cause No. 1958 of 2003 without the knowledge and consent of the children of the other two houses. She did not disclose to the court the existence of the other two wives or their children.

She in doing so, failed to reveal to the court important information which was material to the issuing of the grant. At the end of the process, she clearly obtained the grant of letters and confirmed the same, fraudulently. This court cannot allow the grant to stand.

The objector herein Amos Ng'ang'a Kamuyu seeks revocation and annulment of the grant aforementioned on exactly the same grounds as above. The letter of the Chief of the area from which the parties come has confirmed in his letter dated 10.2.2005 that the petitioner had also failed to disclose to him the existence of the undisclosed members of the deceased's family aforementioned.

It did not therefore surprise the court that Esther Karura Kamuyu failed to turn up in court to defend this application for revocation. At the same time they did not defend the Summons for revocation which they had filed in Succession Cause No. 1791 of 2004 petitioned by Amos Ng'ang'a Kamuyu.

The court accordingly makes the following orders:-

ORDERS:

- 1. The grant of Letters of Administration intestate, issued to Esther Karura Kamuyu in High Court Succession Cause No. 1958 of 2003 on 17.10.2003 and confirmed on 24.1.05 is hereby revoked forthwith.**
- 2. The grant of Letters of Administration intestate issued to Amos Ng'ang'a Kamuyu and Esther Karura Kamuyu in High Court Succession Cause No. 1791 of 2004 is hereby ordered fixed for confirmation on a date to be taken in the Registry.**
- 3. Amos Nganga Kamuyu and Esther Karura Kamuyu as the administrators of the estate of the late Kamuyu Ng'ang'a Waweru alias Peter Ng'ang'a Kamuyu alias Kamuyu Ng'ang'a do sit with all the interested beneficiaries to agree on the mode of distribution of the estate failure of which each administrator do file a proposal for distribution within 60 days.**
- 4. Each party to bear own costs.**
- 5. Copy of this ruling to be filed in Succession Cause Nos. 1958 of 2003 and 1791 of 2004 and the two files to kept or tied together.**

Dated and delivered at Nairobi this 2nd day of July 2008.

D.A. ONYANCHA

JUDGE