



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT MERU**

**Succession Cause 17 of 2002**

**IN THE MATTER OF THE ESTATE OF M'IKIUGU M'MUGUONGO (DECEASED)**

**M'IMPWII M'IKIUGU .....PETITIONER**

**VERSUS**

**CATHERINE NKIROTE M'ARIMI**

**CATHERINE NCHABIRA .....OBJECTORS**

**RULING**

This is summons for revocation or annulment of the grant to the petitioner herein. The objectors claim that;

- (i) the proceedings to obtain the grant were defective in substance
- (ii) the grant was obtained fraudulently by making of a false statement
- (iii) the grant was obtained by means of an untrue allegation of a fact essential in point of law
- (iv) the person to whom the grant was made has failed, after due notice to proceed diligently with the administration of the estate.

These grounds are supported by averments in the affidavit in support. Basically the objectors' arguments is that the deceased distributed his properties among his children during his lifetime. That by the time of his death he had no property capable of being distributed. That the petitioner failed to disclose this fact when he applied and subsequently obtained a grant. It is further argued that the temporary letters were obtained before the cause was gazetted. Finally the objectors aver that she was not informed by the petitioner that he had filed this cause.

Although counsel for the petitioner did not argue this application, the petitioner has filed a replying affidavit which I am bound to consider in this ruling.

In it the petitioner denies that he filed the cause secretly and that indeed the objector being aware of it brought an application filed in this file on 24<sup>th</sup> April, 2002 which was dismissed. He has also deposed that in it the objectors who have been involved in fraudulent dealings with regard to the deceased's estate by distributing the same after the death of the deceased without, in the first instance, obtaining grant of probate .

That he has instituted Civil Case No.153 of 2002 to recover the land distributed or disposed of in this

manner. I have considered these averments as well as submissions by counsel for the objectors. The 2<sup>nd</sup> objector is a stepsister to the petitioner, the deceased having married two wives. On 25<sup>th</sup> March, 2002, following a petition for letters of administration, the petitioner was issued with a grant of letters of administration.

The same was confirmed on 11<sup>th</sup> February, 2003. On 11<sup>th</sup> March, 2003 the objectors lodged this application in support of the grounds for revocation or annulment of the grant. It is alleged that the temporary letters of administration were obtained before the cause was gazetted.

The gazette notice filed herein is not clear as regards the date. I was, however able to get the original gazette (now in the file) and I can confirm that the cause was gazetted in the issue of Kenya Gazette being Notice No.217 of 5<sup>th</sup> April, 2002.

The grant, as I have stated, was made on 25<sup>th</sup> March, 2002. It is clear, therefore, from this that the grant was made before the cause was gazetted. That was clearly in violation of Section 67 of the Law Succession Act and Rule 7(4) of the Probate and Administration Rules, whose objective is to elicit any objection to the grant of representation within a specified period.

On that ground alone this application succeeds. However, it is fair to consider the other grounds. It is also alleged that the petitioner made false statements or concealed material facts from the court in applying for the grant. That he did not disclose that the deceased had indeed distributed his property before his death and that the same cannot be subject of a succession cause. There is absolutely no evidence to support this assertion. Apart from stating that in 1992(without specifying the date and/or the month), the deceased gave 1 acre to the petitioner and another 1 acre to the objector, there is no evidence to rebut the former's position that the latter distributed the estate after the death of the deceased without a grant. It is also contended that the fact of the existence of other beneficiaries, the 2<sup>nd</sup> objector and her sister, was not disclosed. That averment has not been controverted by the petitioner whose argument is that the 2<sup>nd</sup> objector and all the daughters of the deceased are married. Only dependants of a deceased person qualify to benefit from his estate. A "dependant" is defined in Section 29 of the Law of Succession Act to mean, among others, the children of the deceased whether or not maintained by the deceased immediately prior to his death.

It is the law that where the estate comprise agricultural land, crops or livestock in certain gazetted areas the law applicable will be the law or custom of the deceased's community or tribe.

While it remains to be tested in the trial, the marital status of the 2<sup>nd</sup> objector and her sister is material in so far only as it will be shown that the land in question is agricultural land in a gazetted area.

The petitioner in his affidavit in support of the petition listed all the daughters, including the 2<sup>nd</sup> objector, and sons of the deceased. However, when he applied for the confirmation of the grant the petitioner did not indicate the identities and shares of all the dependants as required by proviso to Section 71(2) of the Law of Succession Act, which provides;

*"Provided that in cases of intestacy, the grant of letters of administration shall not be confirmed until the court is satisfied as to the respective identities and shares of all persons beneficially entitled; and when confirmed the grant shall specify all such persons and their respective shares"*

All the petitioner stated in his affidavit in support of his application for confirmation dated 31<sup>st</sup> January, 2003 is that;

*"That some parties filed an application and it was disposed off (sic) by this court"*

And in his second affidavit dated 6<sup>th</sup> February, 2003 in support of the same application he states;

*“That the only application filed by 3<sup>rd</sup> party was disposed off (sic) in my favour”*

He then proceeds to state that the person(s) beneficially entitled to the estate comprising two parcels of land have been ascertained and determined and that that- person is himself.

That is not what is envisaged in Section 71 (2) aforesaid. There is no dispute that the deceased was survived by sons and daughters. In fact the petitioner himself has averred that there were five daughters and three sons. There is no reason why there was no mention of any of them, except perhaps that the petitioner did not want them to know that he had taken two properties.

For these reasons, I find merit in the present application. The grant of letters of administration made on 3<sup>rd</sup> February, 2002 and dated 11<sup>th</sup> February, 2003 be and is hereby revoked.

The 2<sup>nd</sup> objector shall have leave to formally file an answer to the application for grant of representation and a cross-application within 30 days from the date of this order.

Costs to the objector.

DATED AND DELIVERED AT MERU THIS 26<sup>TH</sup> DAY OF JULY 2007

**W. OUKO**

**JUDGE**