



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT EMBU

Misc Succ Appli 83 of 2004

GILBERT MUGENDI EPHANTUS.....APPLICANT

VERSUS

MUCHIRI KAMUNDI.....RESPONDENT

JUDGMENT

The application before the court is for Revocation of Grant of letters of Administration made to Muchiri Kamundi on 14/6/2001 and the same be nullified. There is a second prayer to nullify registration and transfers of subdivisions of **L.R. Mwimbi/Murugi/822**. The third prayer is that the suit **Senior Resident Magistrate Succession No.9 of 2000 from Chuka Law Court to High Court Embu**. Directions were issued that the evidence may be taken viva voce. The grounds upon which this application is made are stated, that the administrator was not the first person in priority entitled to petition for grant, and that the beneficiaries of the deceased never consented to his appointment and that inclusive of K. Daniel Chabari and Cathrine K. Josephat during the proceedings was illegal because they are not beneficiaries and that the distribution is not equitable unfair and unjust especially for disinheriting. Grace Mukwanjeru, Philisila Kaburi a daughter and wife of deceased. Distribution was also contrary to provisions of sections 40 of succession Act. The supporting affidavit shows that the administrator was only a brother of deceased and had no first priority and that the survivors were widow and children and that not every beneficiary gave written consent to him to apply. That the asset of deceased plot No. **MWIMBI/MURUGI/822** has been subdivided into 2580, 2581, 2582, 2583, 2584, 2585 and transferred to:-

1. K. Daniel Chabari
2. Cathrine K. Josephat
3. Muchiri Kamundi
4. Mbae Rucha.

Grace Mukwanjeru and Philisila Kaburi are not given any share. There is also other subdivision and transfer to third parties. The deceased was a polygamous man and the estate should be divided into the two houses.

Upon the perusal of P&A 80 (Petition of Letters of Administration Intestate) the Respondent described himself as son of deceased. Evidence shows that he was only a brother. Form P&A 5 also describes the administrator as son. Gilbert Mugendi Ephantus did not give consent and was not among the list of

survivors of deceased. Infact the survivors of deceased from his two wives were 8, four sons and 4 daughters. The Respondent Muchiri Kamundi is not one of them. The member of survivors is disclosed by the Respondent. The Respondent did not disclose the number of wives at the time he made petition. The Respondent who was not a beneficiary took for himself land. He also granted inheritance to people who are not members of family. K. Daniel Chabari and Cathrine K. Josephat and denied some beneficiaries. The distribution is unjust. Section 76 of Succession Act Cap.160 provides for the Revocation or annulment of a grant issued on certain grounds set out.

- (a) that the proceedings to obtain the grant were defective in substance.
- (b) that the grant was obtained fraudulently by the making of false statement or by concealment from the court of something material to the case.
- (c) That the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant notwithstanding that the grant was made in ignorance or inadvertently.

In this case the grant issued on 1/12/2000 did not name the person issued with the grant. This may be said to be a slip. Also the notice published in the Gazette of 11/8/2000 the Respondent was described as “**in his capacity as an administrator of deceased estate**” This was irregular because he had not yet been appointed again in the petition. The Respondent is described as son of the deceased which is not true. In the affidavit in support, there are only 5 beneficiaries named. The second widow of deceased was not named. The children of second wife were not named. Out of 8 children of deceased only 3 of them gave consent and the first widow who is now deceased.

It is clear that the Respondent described as brother of deceased which was not true and did not mention the persons with priority to petition for a grant.

The distribution is not in accordance with the law due to the non disclosure and concealment of material facts from the court.

I therefore find that the provisions of section 76 Succession Act are proved and I hereby allow the application and grant orders as prayed.

The Respondent is ordered to pay the costs of this suit.

Orders accordingly.

Dated this 10th July, 2007.

J. N. KHAMINWA

JUDGE

10/7/2007

Khaminwa – Judge

Njue –Clerk

Mr. Gitonga HB for Mugo

Read in open court.

J. N. KHAMINWA

JUDGE