



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
Succession Cause 231 of 2004

EWWDECEASED

VERSUS

JBW PETITIONER

JUDGMENT

The deceased in this succession cause the late EWW (*deceased*) passed away on 17th June 2003. Letters of Administration in respect of the deceased estate were issued to JBW on 19th July 2004.

The applicants in the summons for revocation dated 22nd September 2004 is Hellen Wambui. She has sought for orders of revocation of the grant issued to JBW, on the grounds that it was fraudulently obtained by the making of a false statement and by concealment from court of something material to the case. Directions were given that this matter be determined by way of oral evidence.

During the hearing of this application, the applicant gave evidence in support of the application. According to the applicant, she is related to the deceased by virtue of her marriage to the deceased late son JNW who passed away in 1992. She married him in January 1987 according to the Kikuyu Customary law of marriage and they were blessed with two children namely; EW born on 3rd January 1988 and HW born on 16th November, 1989. She produced the original copies of the birth certificates which clearly show the father of these children is JNW

After the death of her husband, the applicant told this court that she continued to live with her mother-in-law, the deceased herein at the family land known as Olale Scheme number 51 but due to disturbances brought by the tribal clashes in 1992, the whole family moved to Nakuru at a place called Free Area. Subsequently, the applicant said she moved to Njoro to carry out a business but she contended that she used to visit her mother-in-law every weekend. In the course of time, she got other two children but she denied that she has been married to another man.

She said that she filed this application for revocation of grant because the petitioner failed to disclose that the deceased was survived by the children of her late son and herself who are the beneficiaries of the estate of their grandmother and mother-in-law respectively.

On the part of the petitioner, John Kibinge Wainaina gave evidence in support of his petition. He acknowledged that his late brother married the applicant in 1987 and they had two children namely; EW

and HW. He said that he recognizes those two children as beneficiaries of the estate of his mother but claims that the applicant married another man and she should not benefit from the estate of his late mother.

The petitioner told this court that the applicant was given Kshs.300,000/- during the life time of their mother which was meant for the education of the two children by the applicant and his late brother. He further said that the reasons why he left out the applicant and her children is because she married another man with whom they have two children and as such the applicant should not inherit the estate of their mother.

From the above evidence the issues for determination are three fold;

- 1) *Who are the beneficiaries of the estate of the late EWW?*
- 2) *How should the estate be distributed?*
- 3) *Was the grant issued to the petitioner obtained fraudulently and through concealment of material facts?*

There is no dispute that the deceased was survived by the petitioner and the estate of her late son JNW who died in 1992 but left two children.

These two children have been recognized by the petitioner in his evidence. The petitioner therefore ought to have disclosed in his petition for the letters of Administration the names his late brother and those who survived his late brother pursuant to the provisions of **Rule 7 of the P & A Rules**. The petitioner gave his name and that of Consolate Njeri Muthee (*married daughter*) as the only survivors of the deceased.

I find that there was material non-disclosure. The deceased late son is survived by his two children namely Elizabeth Wanjiru and Harun Wainaina. It is clear one of the children has not attained the age of majority and the law provides that where there is a continuing Trust of a minor beneficiary the letters of Administration should be made to two Administrators. In order for the interests of these two children to be taken into account, the grant of letters of administration should have been issued to two administrators.

For the interest of justice and for expeditious disposal of this matter and pursuant to the inherent powers vested upon this court by virtue of **Section 47 of the law of Succession and Rules 73 of the P & A rules**, I makes the following orders:

- 1) ***That the grant issued to JKW on 19th July 2004 he and is hereby revoked. The original copy should be surrendered to the registry for cancellation).***
- 2) ***Another grant be issued to JKW and HW as joint administrator.***
- 3) ***The beneficiaries of the estate of the deceased are: -***
 - i) *JKW*
 - ii) *Consolata Njeri Muthee (married daughter)*
 - iii) *a) EW }*
 - b) *HW }both representing the estate of*

the deceased son's estate, the late JNW and their share be held by the applicant HW until they obtain the age of majority.

4. ***Both administrator either jointly or severally to apply for the confirmation of the grant.***

5. *Costs be in the cause.*

It is so ordered.

Ruling read and signed on 26th May 2006.

MARTHA KOOME

JUDGE