



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MERU

Succession Cause 33 of 1998

IN THE MATTER OF THE ESTATE OF M'IKUNYUA N'NTIEE..... DECEASED

RAEL NCHURUBI.....PETITIONER

V E R S U S

SEBASTIANO KIRAITHE IKUNYUA.....1ST OBJECTOR

SILBERIA NDEGE NTHIEE.....2ND OBJECTOR

R U L I N G

1. By an Application dated 12.5.2004 premised on Rules 49 and 73 of the Probate and Administration Rules, the objectors seek the following Orders:

A) That this Honourable Court be pleased to Order the Petitioner/Respondent to furnish the Counsel for the Objectors and/or this Honourable Court with the following particulars:-

- (i) Paragraph 6 (a) of form P & A5 – Search Certificate or copy of the Register (Green Card/White Card) for the Land at Magongo Mombasa built with plots.**
- (ii) Paragraph 6(b) of form P & A 5 – Search Certificate or a copy of Register (Green/White Card) for Land at Chaani Mombasa.**
- (iii) Paragraph 6(c) of form P & A 5 Search Certificate or copy of Register (Green/White Card) for land at Kisauni.**
- (iv) Paragraph 6(d) of form P & A 5 – Prepare of Motor Vehicle's Certificate for Motor vehicle Reg. No. KXK 560 as at 20th June 1996.**
- (v) Paragraph 6 (e) of for P & A 5 – search Certificate or copy of the register Green/White Card) for land at Kaongo.**
- (vi) Paragraph 6(f) of form P & A 5 – Search Certificate or copy of register (Green/White card) for land at Kauri.**
- (vii) Paragraph 6(g) from P & A5 – search Certificate or Copy of register (Green/White card)**

for land at Kariene

(viii) Paragraph 6(h) form P & A5 – Search Certificate or copy of register (Green/White card) for land at Nkandone No.(514).

(ix) Paragraph 6(i) form P & A5 – search Certificate or copy of register (Green/White Card) for land at Munyari.

(x) Paragraph 6 (j) form P & A5 – Search Certificate or copy of register (Green/White card) for land at Mututa.

(xi) Paragraph 6(k) form P & A5 search Certificate or copy of register Green/White card) for land at Nkuunjumo No. 814.

(xii) Paragraph 6 (1) form P& A5 – Search Certificate or copy of registered (Green/White card) for land at Mpindi.

(xiii) Paragraph 6(m) from P& A5 – Search Certificate or copy of register (Green/White card) for land at Ngucia.

(xiv) Paragraph 6(n) form P&A – Search Certificate or copy of register (Green/White card) for land at Kaongogacheke.

(xv) Paragraph 6 (o) form P & A5 – Search Certificate or copy of register (Green/White card) for land at Nkumbo.

(xvi) Paragraph 6(p) from P& A5 – Search Certificate or copy of register (Green/White card) for plot at Makutano.

(xvii) Paragraph 6 (q) form P& A5 – Registrar of Motor Vehicle’s certificate for Motor Vehicle Registration No. KAA 346V (Lorry).

(xviii) Paragraph 6(r) form P & A – Registrar of Motor Vehicle’s Certificate for Motor Vehicle Registration No.KYH 127 (pick up).

(xix) Paragraph 6 (s) form P & A5 – Registrar of Motor Vehicle’s Certificate for Motor Vehicle Registration No. KKK 015.

(B) THAT this Honourable Court be pleased to expunge any item listed in the inventory of Assets whereby the Petitioner fails to furnish the required particulars or ALTERNATIVELY the Honourable Court do strike out the entire petition in the event that the petitioner fails to furnish all the particulars required as per paragraph (1) above.

(C) Costs of this application be provided for.”

2. The Applicant’s contention is that the Petitioner has refused, ignored and neglected to file the necessary supporting documents to enable the objectors authenticate the correctness of the assets allegedly left behind by the deceased in this cause, M’Ikunyua M’Nthee.

3. In spite of the fact that the Application was filed and served close to a year ago the particulars were not given and the record shows that on 10.7.2006, Mr. Mwangi Advocate for the Petitioner stated that his client “**is unable to say what assets belong to the deceased**” and that he was unable to supply the particulars required. His only answer when the Application was eventually heard was that an objector must know what assets belong to the deceased otherwise the objection must fail. The other is that there is no requirement for particulars in matters of probate and in any event the application ought to be by way of summons and not motion.

4. I note that the Petition herein was filed on 18.2.1998 and in form P & A 5 a number of assets are listed but save for motor vehicles registration numbers KXK 560, KAA 346 V, KYH 127 and KXX O15, the rest are identified in general terms and the particulars thereof are wanting. The list of liabilities is equally wanting. The objectors in their objection have raised the question that the list assets is defective and that the Petition is defective in many other respects including that the deceased had no liabilities at the time of death.

5. For my part, the objections to the Application are really non-issues because it is admitted that the Petitioner is unable to supply the particulars because by the admission of her advocate, she does not know them herself. That aside, the Petitioner is expected by the provisions of Rule 7 of the Probate and Administration Rules to give **“so far as may be within the knowledge of the applicant, the following particular”** inter-alia; **“a full inventory of all his assets and liabilities at the date of death (including such, if any, as may have arisen or become known since that date together with an estimate of the value of his assets movable and immovable and his liabilities.**

6. Rule 7(2) is in mandatory terms and the petitioner is expected to exhibit by affidavit a certificate or a photocopy of the certificate of death of the deceased or such other written evidence of the death as may be available. The petition in this matter aside from not complying with the requirement for a detailed inventory of assets and liabilities does not also have either the original certificate of death or even a photocopy of it and there is therefore no evidence before this court that M’Ikunyua M’Nthiee is actually deceased.

7. What then should this court do when confronted with a wanting Petition in a Succession Cause? The Applicants are asking me to expunge the items in the inventory of assets where no particulars are given and in the alternative to strike out the entire petition. I think that the earlier prayer is only available if no particulars are given and is only available if no particulars are given and is a drastic measure which a Court can only take if the Petition cannot be redeemed by other means and where it is hopelessly before court.

8. I think what attracts me would be to order the Petitioner to furnish the particulars as sought under prayer 1A of the Application dated 12.3.2006 and to do so within forty five (45) days of this order. Failure to do so would necessitate that all the items listed in paragraph 1A thereof will be expunged from form P and A5 in the instant cause. In effect I will allow prayer 1A and 1B of the Application but shall not order that the petition be struck out, and in any event to be the particulars supplied within forty – five (45) days of this order.

9. Costs shall be in the cause.

10.Orders accordingly.

DATED SIGNED AND DELIVERED AT MERU THIS 3rd DAY OF OCTOBER 2006

ISAAC LENAOLA

JUDGE

In the Presence of

N/A Advocate for the Petitioner

Mr. Riungu Advocate for the Objector

ISAAC LENAOLA

JUDGE