

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT BUSIA
Succession Cause 36 of 2001

IN THE MATTER OF THE ESTATE OF THE
LATE NAFTALI ABWAVO MAJONI.....DECEASED

AND

IN THE MATTER OF MIRRIAM MAJONI.....PETITIONER

VERSUS

RACHEL LYDIA LIDEDE

ELIKA LOSENJE.....APPLICANTS

R U L I N G

The petitioner, Mirriam Musimbi Majoni, applied to this Court and successfully obtained a grant of letters of administration intestate of the estate of Naftali Abwavo Majoni, deceased on 14th March, 2002. This is the grant which the applicants, Rachael Lydia Lidede and Elika Losenja are seeking to be annulled in an application filed pursuant to the provisions of Rule 44 (1) of the probate and administration rules. The application is supported by a joint affidavit of the two applicants sworn on 12th June, 2003 and a reply to a replying affidavit of Rachael Lydia Lidede sworn on 30th October, 2003.

The petitioner opposed the summons for revocation or annulment of grant by filing an affidavit she swore on 30th June, 2003. Directions were given on the day this matter came up for inter partes hearing under rule 44(4) of the probate and Administration Rules. The summons was directed to go hearing on the basis of affidavits for and against the summons.

The applicants are of the view that the petitioner obtained the grant of letters of administration of the estate of their deceased husband Naftali Abwavo Majoni by making of a false statement that there was a will yet there was none. The applicants accused the petitioner of not telling the truth in the matter.

The two widows further accused the petitioner of failing to diligently administer the deceased's estate despite having obtained the letters of representation long ago. The duo pointed out that the petitioner had failed to include all the beneficiaries in the sharing of the deceased's estate. They named one Desmond Tutu specifically of having been locked out as a beneficiary of the estate of Naftali Abwavo Majoni, deceased. The petitioner was further accused of being cruel to the applicants and of administering the estate without consulting them. An allegation was also levelled against the petitioner and her husband to the effect that she has been harassing the deceased's children.

The petitioner filed a defence denying all the allegations levelled against her by the applicants. She averred that a written will made by Naftali Abwavo Majoni (deceased) existed and that the same is safely kept at her advocate's office. She accused the applicants of refusing to get the details of the contents of the will from her Advocate's office despite having been notified of the same. She however conceded that there was a mistake in the grant in that the same appears was issued as

though the deceased died intestate. The Petitioner was of the view that this was an error which is curable under the law.

The provisions of section 76 of the law of succession Act sets out the grounds under which this Court can revoke or annul a grant of representation. The grounds relied by the applicants in this matter basically fall within those described under the above provisions of the law. In view of that I can now confidently consider the merits of these grounds. The first ground is that the petitioner is accused of having concealed the fact that there existed no will. The petitioner was challenged to lay bare the facts on this issue. The petitioner still insisted that a written will existed in her replying affidavit. I have considered the oral submissions made by Mrs Aburili for the applicants and Mr. Onsongo for the petitioner. I have also taken into account the material placed before me. A close perusal of the petition for letters of administration and the supporting affidavit show that the petitioner applied for a grant of representation as an executor of a written will said to be dated 28th December, 1998. The will is mentioned in paragraph 4 of the affidavit in support of the petition of the petitioner sworn on 23rd May, 2001. However there is no annexure of a copy of the will allegedly attached to the aforesaid affidavit. This is a mandatory requirement under provisions of rule 52(1) of the probate and Administration Rules. The information is also hid from the Court when the petitioner failed to annex a copy of the will to her affidavit she swore on 30th June 2003 in response to the joint affidavit deposed by the applicants on 12th June, 2003. The petitioner opted to annex copies of correspondences exchanged between her Advocate and the applicants. From the foregoing chronology of events I am convinced that the petitioner has intentionally concealed from the applicants and the Court a material fact. There is doubt whether there existed any written will at all. Consequently, there is a possibility that the petitioner made allegations which were factually untrue to obtain the grant in the first place. There is also doubt whether the petitioner complied with the provisions of Rule 51 of the probate and Administration Rules. The conduct of the petitioner in this matter lends credence to the allegations made by the applicants that the petitioner obtained the grant of representation to the estate of Naftali Abwavo Majoni (deceased) on the basis of concealment of material facts and by making untrue allegation of facts.

The second ground advanced in support of the summons for revocation or annulment of grant is that the petitioner has not been diligent to administer the estate of Naftali Abwavo Majoni (deceased). She is also accused of being cruel and unco-operative to the applicants and the beneficiaries. I have considered the submissions of both counsels in respect of this ground. I have also perused the competing affidavits. I am not convinced that the petitioner has been cruel to the applicants or to the other beneficiaries. I am not also convinced that the petitioner has not been diligent. The truth of the matter is that there have been family feuds between the protagonists right from the time the deceased passed away. It started with the filing of Busia SRM.C.C. no.315 of 1999 between one Hellen Kakhombi (now deceased) and the applicants and of course followed by these proceedings.

My final decision therefore is to allow the application by annulling the grant of representation given to Miriam Musimbi Majoni on 14th March, 2002 on the ground that the same was obtained by means of an untrue allegation of fact made intentionally and in view of the fact that the petitioner is guilty of material non-disclosure of the in existence of a will. Costs of this summons shall be paid by the Estate of Naftali Abwavo Majoni deceased.

DATED AND DELIVERED THIS 8th DAY OF April 2005

J. K. SERGON

JUDGE