



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MERU
SUCCESSION CAUSE NO. 43 OF 2003

IN THE MATTER OF THE ESTATE OF M'IKIARA M'ITONGA ALIAS KIAIRA
(DECEASED)

DANCAN MUTHAURA KIAIRA PETITIONER

RULING OF THE COURT

The petitioner herein DANCAN MUTHAURA M'KIAIRA filed his application for grant of Letters of Administration intestate to the estate of the deceased herein M'IKIARA M'ITONGA alias KIAIRA ITONGA. He filed the application on 5.2.2003 in his capacity as son of the deceased. Together with the application he filed form 38 being consent by the other beneficiaries of the deceased's estate consenting to the petitioner being issued with the grant of the letters of administration intestate. The cause was duly advertised in the Kenya Gazette of 14.3.2003 vide gazette notice No. 1609 of the same date.

On 3.4.2003, the objector herein filed his objection to the making of a grant together with petition by way of cross petition for a grant. The objection brought under section 68 of the Law of Succession Act lists seven grounds of objection as follows:-

1. That the petitioner herein filed his petition stealthy, and without seeking any consent and/or renunciation.
2. That the petitioner in his supporting affidavit for petition for Letters of Administration fraudulently failed to mention the objector as one of the persons who survived the deceased as required by section 51(1) (g) of the Law of Succession Act and Rule 7(1) (e) of the probate and Administration Rules.
3. That the petitioner by virtue of his dishonesty towards the objector is hatching a design to disinherit the objector of what rightfully should devolve to him.
4. That the property the subject of the succession cause is family land L.R. No. NTIMA/NTAKIRA/1174 on which the objector has settled and developed since time immemorial with the explicit consent of the deceased herein.
5. That the petitioner cannot faithfully administer and distribute the estate of the deceased fairly and according to law given his dishonesty and deceit towards the objector.
6. That the objector will be evicted from the family land if his objection is not allowed and consequently he will be rendered landless and suffer irreparably.
7. That the objector would like to be granted letters of administration of the deceased's estate.

In his petition by way of cross-petition, the objector states that he is presenting the petition in his capacity as grandson of the deceased with an equal right to a grant of representation to that of the petitioner. He states further that the petitioner did not seek his consent or renunciation to the filing of the petition for a grant of representation and accordingly wants the grant of representation made solely to him. The objector also undertakes to faithfully administer the estate of the deceased and to render a just and true account of such estate in accordance with the law.

The affidavit in support of the objector's petition for grant of Letters of Administration sworn by the objector on 9.4.2004 shows at paragraph 4 thereof that the deceased was survived by the following persons:-

- a) Charles Gatobu – grandson
- b) Duncan Muthaura M'Ikiara – son
- c) Angelica Mparu M'Ikiara – widow
- d) Mary Kajira – daughter (married)
- e) Stanley Murungi M'Ikiara – son
- f) Sarah Kanorio – daughter (married)
- g) Hellen Makena – daughter (married)
- h) Lydia Karugu – daughter (married)

Though the objector does not say whose son he is of the deceased's sons and daughters, and whether or not he is living on the suit land, he avers that the petitioner is seeking to evict him from a portion of the deceased's land, which he (objector) avers was allocated to him prior to the deceased's death. Copies of the death certificate, notice of eviction from the petitioner to the objector and proceedings in Meru L.D. Tribunal case No. 4 of 2001 which objector stated in his affidavit were annexed as "CKI", "CKII" and "CKIII" respectively were actually not annexed to the affidavit and therefore do not form part of the record for purposes of these proceedings.

On the day of the hearing the objector was not in court, even after his name was called out several times and the court therefore allowed the petitioner to proceed ex-parte since the hearing date was taken by consent of both parties on 17.12.2003. In his evidence to the court, the petitioner, urged the court to overrule the objection on the ground that the objector is not a blood relation of the deceased and is not covered by the provisions of any of the section of the Law of Succession Act. He told the court that though the objector's mother is his (petitioner's) wife, the objector was fathered by another man. The objector's mother, one Dorothy Kauthu told the court that the objector is her son but was fathered by one Kirimi and that at the time of her marriage to the petitioner herein, the objector was already two (2) years old. She further stated that though the objector lives with her where she is married, he is not entitled to the deceased's estate as infact his (objector's) father has already given him land. The petitioner's mother, Angelica Mparu M'Ikiara also told the court that at the time of the marriage between the petitioner and the objectors mother (PW2) the objector was already born. The petitioner and his two witnesses were agreed that the objector was not entitled to any share of the deceased's estate, nor was he a dependant of the deceased within the meaning of the Act.

As pointed out earlier, the objector does not say who of the deceased's children is his parent so as to entitle him to be called a grandchild of the deceased. The objector also failed to turn up in court to verify his claims against the petitioner. In the circumstances, I dismiss the objector's objection and answer to petition both dated 9.4.2004. I accordingly order that a grant of Letters of Administration Intestate to the estate of M'Ikiara M'Itonga alias Kiara Itonga (deceased) be made in accordance with the original application herein to DANCAN MUTHAURA M'IKIAIRA. Costs of the objection proceedings shall go

to the petitioner.

It is so ordered.

Dated and delivered at Meru this 20th day of September 2004.

RUTH N. SITATI

Ag JUDGE