

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI
SUCCESSION CAUSE NO. 1831 OF 1996

IN THE MATTER OF THE ESTATE OF HEMED ABDALLA KANIKI

(DECEASED)

RULING

A grant of letters of administration, intestate, to the estate of the late Hemed Abdalla Kaniki, was issued to Sophia Salim Gathiaka and Abdalla Kaniki, widow and son respectively, on 26th January 1999.

In form P&A 5, i.e. the affidavit in support of petition for letters of administration intestate, the petitioners disclosed the deceased properties as shown in para 6, i.e. BLOCK L.R. 171/XII MOMBASA A&B BLOCK B2/4 ORIGINAL 36/VII/581, L.R. NO.36/VII/632, L.R NO. 36/VII/633, CALIFONIA NAIROBI.

The estate was estimated to be valued at Kshs.6 million. I have not found in the court file a Certificate of confirmation of grant of letters of administration which would ordinarily show how the property was distributed. But whatever the case, several applicants moved the court to revoke the grant of letters of administration issued to the petitioners, mainly on the grounds inter alia, that “the grant was obtained fraudulently by making a false statement thereby concealing from the court the fact that plot No.B2/4 (A&B) is a family property for the family of the late Abdalla Nzito Ndambu, Hemed Kaniki’s father and that the said Hemed Abdalla Kaniki, had the property registered in his name as a trustee for the family, and not as a sole proprietor.

There are various affidavits in the court file sworn and filed by the applicants, claiming a share of this property.

The petitioners have denied the claim of ownership by the applicants.

Though the advocates consented to prepare written submissions for the determination of summons for the revocation or annulment of the grant, I have read through their submissions but has come to the considered conclusion that the applicants should be given a chance to address the court by way of “viva voce” evidence, to enable the court to judge their credibility, and therefore decide on the truth or otherwise of their allegations.

I am therefore directing that this file be placed before the Presiding Judge, Family Division for mention with a view to allocating the same to a Judge who will listen to oral evidence of the parties, on the application for revocation or annulment of the grant. I make no order as to the costs of the summons for revocation, as the same has not been determined.

Dated at Nairobi this 22nd day of August, 2003.

JOYCE ALUOCH

JUDGE