



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

H.C. COURT SUCCESSION CAUSE NO. 1647 OF 2001

ANASTACIA MBULA KILUNGU APPLICANT

V E R S U S

JULIANA KILOKO MAINGI..... 1ST RESPONDENT

BENJAMIN MAINGI2ND RESPONDENT

R U L I N G

Before me is an application dated 25th October, 2001 seeking prayers for revocation of the grant of letters of administration granted to Juliana Kiloko Maingi and Benjamin Maingi Keiti. The grounds on which the prayer is sought are:

- (a) That Julian Kiloko Maingi and Benjamin Maingi Kieti purportedly presented the petition for grant of letters of Administration as wife and father of the Deceased respectively while in fact the 1st Petitioner was long separated from the Deceased and the 2nd petitioner is not the father of the Deceased.
- (b) The Petitioners conduct amounts to fraud and is contemptuous of the Court.
- (c) The list of assets mentioned in the application for Grant of Letters of Administration includes properties that did not belong to the Deceased.
- (d) The petitioners secretly obtained a separate Death Certificate and subsequently misled this Honourable court into granting them Letters of Administration.
- (e) The Petitioner has failed to disclose other beneficiaries in the petition.
- (f) The petitioner's 30 day notice under Section 67 (1) of the Succession Act Cap 160, was published on the Kenya Gazette on the 3rd day of August, 2001.

The petition was filed on 12th July, 2001 by the aforesaid two persons and their relations to the deceased were described as his widow and father. It is admitted that the 2nd petitioner is not the father of the deceased but, in fact, is the father of the 1st petitioner who is a widow. So far, that declaration made in the petition is not true. The petition also specifies various properties as assets of the estate.

The applicant herein is the mother of the deceased and she also stands for a minor child named Mukami Mwangangi who is admitted to have been sired by the deceased. It is also averred that one Ida Anyango Amino is the second wife of the deceased and the Petitioner have concealed the names of the above beneficiaries from the court. The Applicant in her affidavits sworn on 24th October, 2001, 16th May,

2002 and 11th October, 2002 have mentioned several properties which according to her do not belong to the deceased. She has annexed relevant documents to support her contention. She has also annexed the birth certificate of aforesaid minor to show that the deceased was her father.

In her replying affidavit the 1st Petitioner denied that the properties mentioned in applicant's affidavits are not estate properties. She annexed a letter of one Jonathan Kioko dated 19th February, 2001 to support that the three plots mentioned were sold to the deceased. But the said Jonathan has sworn an affidavit on 17th May, 2002 and has averred that he had given the above mentioned letter to the 1st Petitioner on her misrepresentation that the applicant had agreed to give the 1st petitioner the plots after the death of the deceased. He has thus retracted the letter and has reiterated that the plots were sold to the applicant as averred by her. The documents showing the payment and allotment letters are also on record before me. A brother of the deceased one Anthony Mwendo Kikungu also has corroborated the averments of the applicant that the 1st Petitioner has been separated with the 1st Petitioner carrying away all the households with her. In her affidavit sworn on 14th October, 2002 the 1st petitioner has totally ignored to respond to all the averments.

There has been correspondence between the counsel of the petitioners and Bank as well as Land Development Societies to show that the petitioners were very eager and in a hurry to finalise the estate matter after the grant. Apart from those letters and some of which are without any letter-heads of the society, the 1st petitioner has not substantiated her claim that the properties do belong to the estate. The plea of her counsel that in that case she shall have an empty estate is neither here nor there.

Suffice it is to state that there has been concealment of facts and misrepresentation by the petitioner while presenting the petition. The grant on the basis of the said grounds cannot be allowed to stand.

I shall thus revoke the grant of representation made to the Petitioners in this cause and in view of clear and irreconcilable differences between the 1st petitioner and the applicant I direct that the grant be issued in the joint names of the counsel of the parties with the 1st petitioner and the applicant. I am advisedly avoiding to involve the Public Trustee in this matter.

After the new grant is issued the parties can either file further affidavits from the officials of the societies namely Lukenya Ranching and Maili Saba Jua Kali society, or to call the Officials of those societies to give evidence before the court. Once the issue of the properties of the estate is resolved the parties shall file the application of confirmation of the grant.

Dated and delivered at Nairobi this 11th day of December, 2002.

K. H. RAWAL

JUDGE.