

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

FAMILY DIVISION

SUCCESSION CAUSE NO. 1246 OF 2017

IN THE MATTER OF THE ESTATE OF THOMAS NYAKANG'O ABERE (DECEASED)

CHARLES OSINDI NYARANGI.....APPLICANT

VERSUS

LUCY MOKEIRA OMBOGA.....1ST RESPONDENT

CHRISTINE KEMUNTO MARIITA.....2ND RESPONDENT

RULING

1. The deceased Thomas Nyakang'o Abere died on 12th April 2017. On 5th June 2018 a joint grant of letters of administration intestate was issued to his second wife Lucy Mokeira Omboga (1st respondent) and his sister Christine Kemunto Mariita (2nd respondent) upon petition. The estate was stated to comprise a house in Umoja (Plot No. 958 – 4B Umoja II) and KCB shares. Following summons dated 28th February 2019, the grant was confirmed in which the property was registered in the joint names of the respondents to hold in trust for the two minor children of the 1st respondent, namely Leonard Ochonga Nyakango and Arnold Kerusi Nyakango.

2. It is evident from the present application dated 16th June 2020 for the revocation of the grant, and the response of the 1st respondent, that the deceased had the first family whose children are Linda Bosibori Nyakang'o and Edwin Ochonga Nyakang'o. The respondents did not disclose in the petition that the deceased had another family. They did not seek the consent of this family, and the family had not renounced their claim to the grant. They did not provide for this family during the distribution of the estate of the deceased.

3. Under **section 51(2)(g) of the Law of succession Act (Cap 160)** and **rule 7(1) of the Probate and Administration Rules**, the respondents were required to indicate in the petition all the names and addresses of the children of the deceased. Further, under **rule 26(1) and (2) of the Probate and Administration Rules**, the respondents were obligated to notify the first family of the deceased that they were petitioning for the grant, and to obtain their consent. The failure to disclose in the petition all the family members of the deceased amounted to non-disclosure of material facts. It is not enough for the 1st respondent to allege that the deceased had before his death provided for the first family. The first family needed to be informed of the petition to be given an opportunity to renounce their entitlement. This non-disclosure is sufficient to revoke the grant that was issued to the respondents (**Stephen Marangu M'Itirai –v- Silvena Nceke & 4 Others [2015]eKLR**).

4. When the applicant Charles Osindi Nyarangi applied to revoke the grant, his case was that the deceased had on 11th January 2017 left a written Will (which he annexed) in which he (the applicant) was appointed the executor. He stated that he had brought the Will to the attention of the 1st respondent who had, however, gone on and petitioned for the grant without his notice. His case was that the deceased had not died intestate.

5. The 1st respondent's response was that the alleged Will was not valid because the deceased had executed it while seriously ill and in great pain; that the said Will had given to her house property that belonged to third parties, and property that was non-existent; and that the applicant had not brought the Will to her attention.

6. On its face, the Will appears properly executed and witnessed. The respondents did not challenge the signature of the deceased in the Will. It is evident that the deceased left a written Will, and therefore he died testate. If that is the case, I find that the proceedings, which were brought on the basis that the deceased had died intestate, were defective in substance.

7. In conclusion, I revoke the grant issued to the respondents on 5th June 2017, and confirmed on 1st April 2019. I set aside the certificate of confirmation issued on 1st April 2019. I recall both the grant and the certificate of confirmation.

8. Costs shall be borne by the respondents.

DATED AND DELIVERED AT NAIROBI THIS 7TH DAY OF JUNE 2021.

A.O. MUCHELULE

JUDGE