



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

SUCCESSION NO. 320 OF 2017

IN THE MATTER OF THE ESTATE OF BONIFACE MWANGI GITAU

IRENE WAIRIMU IRUNGU.....APPLICANT

VERSUS

ALICE W. MAINA.....1ST PETITIONER/ADMINISTRATOR

MARY W. MWANGI.....2ND PETITIONER/ADMINISTRATOR

DAVID G. MWANGI.....3RD PETITIONER/ADMINISTRATOR

DENNIS K. MWANGI..4TH PETITIONER/ADMINISTRATOR

RULING

1. Boniface Mwangi Gitau the deceased herein died on 4.1.17 at the age of 55 years. The record shows that the deceased was survived by his widow Alice Wanjugu Maina (Alice), and 2 children Mary Wanjiru Mwangi (Mary) and David Gitau Mwangi (David). The estate of the deceased comprised of a property known as Plot D 318, Dandora. A grant of letters of administration (the Grant) was on 10.7.17 issued to Alice and thereafter confirmed on 11.4.18. The certificate of confirmation of grant of even date indicated that the sole property of the estate was to be distributed to Alice, Mary and David in equal shares.

2. By her Summons dated 17.12.18 Irene Wairimu Irungu (Irene) seeks revocation of the Grant. In her summons, she names Alice, Mary, David and one Dennis K. Mwangi as petitioners/administrators. The grounds upon which the Application is premised are that Irene was married to the deceased and they cohabited in the suit property, which is her matrimonial home; that the Petitioners excluded her in the petition for the Grant and did not inform or obtain her consent; that they seek to disinherit her and her minor children; that in a bid to evict her from her matrimonial home the Petitioners on 10.12.18, accompanied by police officers invaded her matrimonial home armed with an order and attached her property falsely claiming that she was a tenant in rent arrears of Kshs. 1,158,000/=; that the Petitioners failed to disclose the properties of the deceased:

- i. Plot No. 220 Nakuru Cider Lodge.
- ii. Part of the estate at home in Bahati Nakuru
- iii. Co-operative Bank account no. 0111xxxxxx
- iv. Barclays bank account No. 0758xxxx

3. Alice opposed the Application by her replying affidavit sworn on 5.5.21 and denied the allegations made by Irene. In particular, she claimed that the chief's letter exhibited by Irene stating that Irene was a wife to the deceased is by a chief without jurisdiction. Alice seeks that the chief be summoned for cross examination; that the affidavit of marriage exhibited by Irene is void as it does not bear the name of the commissioner of oaths who administered the oath; that contrary to her averments, Irene was aware that Alice was the administrator of the estate; that the suit property is not Irene's matrimonial home and that Alice assisted the deceased in developing the same; that the office of the Director of Housing Development Department should explain how it issued a payment card when Alice had the original all along; that the said payment card does not contain a picture of the deceased; that the purported affidavit by the deceased allegedly sworn on 23.12.12 was part of the efforts of Irene to deprive Alice of her right to property; that Irene has been collecting rent from the suit property since January 2017, which rent does not belong to her. Alice averred that the Grant was obtained validly and urged the Court to dismiss the summons with costs.

4. I have carefully considered the summons, the rival affidavits as well as the filed submissions. It is quite evident that the matters raised herein including the highly contested issue as to whether Irene Wairimu Irungu was a wife of the deceased, can only be established by adduction of *viva voce* evidence. Such evidence will be subjected to cross examination and the Court will have opportunity to observe and scrutinise the demeanor of the witnesses. To better serve the interests of justice therefore, I direct that the summons for revocation of grant dated 17.12.18 be disposed of by way of *viva voce* evidence. Mention on 29.7.21 for directions as to hearing.

DATED, SIGNED AND DELIVERED IN NAIROBI THIS 16TH JULY, 2021

M. THANDE

JUDGE

In the presence of: -

.....**for the Applicant**

.....**for the Respondents**

.....**Court Assistant**