



IN THE HIGH COURT OF KENYA

AT KIAMBU

CORAM: D. S. MAJANJA

CIVIL APPEAL 105 OF 2018

BETWEEN

ESTHER MURUGI MACHARIAAPPELLANT

AND

TABITHA WANGARE KARANJARESPONDENT

(Being an appeal from the ruling and order of Hon. V. Kachuodho, RM dated 30th July 2018 in Thika Magistrates Court Succession Cause No. 216 of 2016 (Formerly Succession Cause No. 75 of 2015))

JUDGMENT

1. This is an appeal from the ruling of the trial court in which the court revoked the grant issued and confirmed on 28th April 2014 and 9th February 2015 respectively in respect of the estate of Monica Wanjiru Macharia (deceased) who died on 24th January 2012.
2. The court revoked the grant under **section 76** of the *Law of Succession Act (Chapter 160 of the Laws of Kenya)* on the ground that the appellant failed to disclose that she had 6 siblings when she filed **Thika Magistrates Court Succession Cause No. 75 of 2019**.
3. As this is a first appeal, I am required to examine all the evidence and reach an independent decision bearing in mind that I neither heard nor saw the witnesses testify.
4. As I understand, the appellant's case was that she did not need to disclose the other beneficiaries as the deceased had made an oral will in which she was the sole beneficiary. She did not dispute the fact that the deceased had other children.
5. The trial magistrate was right to hold that she had a duty to disclose the existence of all her siblings in the circumstances. I note that although the appellant stated that the deceased had made an oral will, the proceedings were commenced by way of a petition for grant of letters of administration intestate and in fact a grant of letters of administration intestate (Form P & A 41) issued. In that case **section 51** of the *Law of Succession Act* which deals with the information that should go into an application for grant of representation applied and in particular under **section 51(2) (g)** thereof which states:

51(2). An application shall include information as to ____...

(g) in cases of total or partial intestacy, the names and addresses of all surviving spouses, children, parents, brothers and sisters of the deceased, and of the children of any child of his or hers then deceased...

6. The duty to provide the information is mandatory hence I do not find any merit in this appeal. As it is a family matter, I will not award costs.
7. The appeal is dismissed.

DATED and DELIVERED at KIAMBU this 6th DAY OF JANUARY 2020.

D. S. MAJANJA

JUDGE

Mr Kanyi instructed by Muturi Njoroge and Company Advocates for the appellant.

Mr Njeru instructed by Ishmael and Associates Advocates for the respondents.