



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

SUCCESSION CAUSE NO. 599 OF 2015

IN THE MATTER OF THE ESTATE OF SILAS KIRERA M'MBWIRIA Alias CYRUS KIRERA MUGWIKA- DECEASED

TABITHA MUKUBA KIRERA.....PETITIONER

VERSUS

RUTH KAGWIRIA GITOBU.....APPLICANT

RULING

1. Before me is a summons dated 29/4/2019 expressed to be brought under section 76 of the law of succession act seeking that the grant of letters of administration made to Tabitha Mukuba Kirera on 19/3/2019 be revoked. The application was supported by the affidavit of Ruth Kagwiria Gitobu who deposed that the statement by the petitioner that the deceased was survived by the persons named in her affidavit only is false. According to the applicant, apart from the said persons the deceased was also survived by Nahason Muthomi Kirera who is now deceased and was survived by several children. He was allocated 2 acres of the land by the deceased which he utilized to provide for the dependents. Therefore, the said dependents stand to be disinherited if the grant is not revoked.

2. The application was opposed by the replying affidavit of Tabitha Mukuba Kirera who argued that the grant was not fraudulently obtained as she correctly stated who the beneficiaries of the deceased were. Indeed Nahason Muthomi Kirera was a son to the deceased, he was neither married nor did he have any children known to her. The persons named in the applicant's affidavit are strangers to her and the attached birth certificates are not authentic as they could have been fraudulently obtained. Additionally, Muthomi's children are not beneficiaries of the estate of the deceased.

3. She however suggested that the grant be rectified in order to make it more equitable as the said property was acquired through the efforts of the deceased and herself without the input of any other dependents. She went ahead to suggest the following as a mode of distribution;

LR NO. NYAKI/GIAKI/945

a) Tabitha Mukuba Kirera - 4.5 Acres

b) Ruth Kagwria Gitobu - 1.125 Acres

(to hold on behalf of herself and - 1.125 Acres

children in equal shares)

c) Evangeline Mwari Murithi - 1.125 Acres

d) Mary Kangai Henley - 1.125 Acres

e) Solomon Muriki Kirera - 1.125 Acres

4. I have carefully perused through the application, affidavits, submissions and the record. Has the applicant established ground or grounds for revocation of the grant issued on 19/3/2018?

5. Section 76 of the Law of Succession Act provides as follows:-

76. Revocation or annulment of grant

A grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by any interested party or of its own motion—

- (a) That the proceedings to obtain the grant were defective in substance;
- (b) That the grant was obtained fraudulently by the making of a false statement or by the concealment from the court of something material to the case;
- (c) That the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently;
- (d) That the person to whom the grant was made has failed, after due notice and without reasonable cause either—
 - i. to apply for confirmation of the grant within one year from the date thereof, or such longer period as the court order or allow; or
 - ii. to proceed diligently with the administration of the estate; or
 - iii. to produce to the court, within the time prescribed, any such inventory or account of administration as is required by the provisions of paragraphs (e) and (g) of section 83 or has produced any such inventory or account which is false in any material particular; or
 - iv. that the grant has become useless and inoperative through subsequent circumstances.

6. In their submission the applicants argued that three different women Ruth Kagwiria Gitobu, Stella Makena Thurairira and Anita Kagwiria have claimed to have sired children with Nahashon and provided birth certificates as proof. However the respondent on the other hand argued that no evidence was produced to show that the said children were dependants of Silas Kirera M'Mbwiria.

7. On examination of the record in the letter by the Chief of Ciothirai dated 19/2/2015 Nahasin Muthomi was listed as a beneficiary of the deceased herein. Therefore, the argument that there was concealment of material fact does not hold sway. Certainly, there was also no evidence to prove that the said children were dependent on the deceased herein.

8. I therefore find that the application dated 29/4/2019 has no merit and is therefore dismissed and allow the amendment of the grant to read as follows;

LR NO. NYAKI/GIAKI/945;

- a) Tabitha Mukuba Kirera - 4.5 Acres
- b) Ruth Kagwria Gitobu - 1.125 Acres
(to hold on behalf of herself and - 1.125 Acres
children in equal shares)
- c) Evangeline Mwari Murithi - 1.125 Acres
- d) Mary Kangai Henley - 1.125 Acres
- e) Solomon Muriki Kirera - 1.125 Acres

9. No orders as to costs. It is so ordered

Signed dated and delivered in open court this 17th day of February, 2020

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F. GIKONYO

JUDGE

In presence of

Ringera for applicant

Otieno for B.Gitonga for petitioner

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F. GIKONYO

JUDGE