



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT CHUKA

MISC. SUCCESSION CAUSE NO. 29 OF 2019

(FORMERLY CHUKA CM'S COURT SUCC. CAUSE NO. 157 OF 2017)

**IN THE MATTER OF THE ESTATE OF THE LATE EPRAIM MUTINDWA M'KARANGA alias EPHRAIM MUTINDWA
M'KARANGA- (DECEASED)**

AND

HILDAH MARY EPHRAIM & 4 OTHERS.....APPLICANTS

VERSUS

FRANKLINE KITHINJI K. MUTINDWA.....RESPONDENT

RULING

1, Before me is an application brought by **HILDA MARY EPHRAHIM** and 4 others, the applicants herein vide Summons for Revocation of Grant dated 15th July 2019 asking this court to revoke a grant issued in **Chuka Chief Magistrate's Court Succession cause No.157/2017** and confirmed on 24th January 2018 on the following grounds namely:-

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 and concealment of material matters.

c) That the grant was obtained by means of untrue allegation of a fact notwithstanding that the allegation was made in ignorance or inadvertently.

2. In the affidavit in support of the application sworn on 15th July 2019, the applicants aver that the deceased left the following dependants:

i) Edith Ntagana Ephraihim - widow

ii) Asenath Mugure Mugambi

iii) Mercy Muthoni Ireri

iv) Harriet Ukima Kamu

v) Hilda Mary Ephrahim

vi) Esther Wanja

vii) Anne Mukwanyaga Mutindwa

viii) Frankline Kithinji Mutindwa

ix) Dorcas Kaari Mutindwa

3. They have further deposed that the estate comprise the following properties;

(i) L.R. Mwimbi/C. Mugutuni/316

(ii) L.R. Mwimbi/C. Magutuni/685

4. The Applicant allege that their brother, Frankline Kithinji Mutindwa, the Petitioner/Respondent herein failed to involve them and that the introductory letter from the chief was misleading as it named only their mother- Edith Ntagana Ephrahim and the Respondent as the only dependants.

5. They have faulted the Respondent for concealment of material facts particularly the existence of the other dependants. They allege that the Respondent has now threatened to harm them if they try to claim a share of the estate.

6. The Respondent has opposed this application on the ground he filed the petition with their consent. He concedes that the applicants are his sisters but insists that there was a family agreement on the administration of the estate. He claims that there was an agreement that once he get the estate he would distribute it to the other beneficiaries.

7. The Respondent has further stated that he was simply carrying out the administration as per the wish of his late father and that the Chief did not include the name of the applicants because they were all married.

8. This court has considered this application and the response made. The petition for letters of administration was filed on 20th September 2017 at the Magistrate's Court by the Respondent as a son of the deceased. In the petition, the Respondent indicates that the only surviving dependants was himself and the widow Edith Ntagana Ephrahim. The Chief's letter dated 17th August 2017 and signed by one Mutembei the Chief Iruma Location confirmed the same. On the basis that a grant of letters of administration was issued on 24th January 2018 and confirmed on 24th September 2018 with Respondent taking the entire estate.

9. It is quite apparent from the application now before court that the trial court proceeded unknown to it that the deceased had left other children or dependants besides the widow and the Respondent. There was an obvious inadvertence on the part of the Respondent to assume that he had consent of all his siblings without complying with the provisions of **Rule 26(1) and (2)** of Probate and Administration Rules. In view of the blatant breach of those Rules, this court finds that the applicants have established sufficient ground to invoke the provisions of **Section 76 of Law of Succession Act**.

9. This court further finds that there was concealment by the Respondent through the Chief's letter that indicated that the dependants left behind by the deceased were only two when the contrary obtains. The Respondent himself has acknowledged that the applicants are his siblings or sisters and there was absolutely no basis to hide that fact from the court regardless of the fact that they were either married or had consented to him being the administrator. He was duty bound to state all material facts before the court.

In the premises this court finds merit in the application dated 15th July 2019. The grant dated 24th January 2018 and confirmed on 19th September 2018 is hereby revoked. All attendant transactions from the said grant are reversed. The properties forming the estate shall revert back to the name of the deceased pending the determination of the cause. A fresh grant shall hereby issue to both;

(i) Edith Ntagana Ephrahim and

(ii) Hilda Mary Ephrahim

They both have the liberty to either jointly apply for confirmation of grant before expiry of 6 months statutory period or apply individually if they fail to agree on the distribution of the estate.

For now I shall make no orders as to costs.

Dated, signed and delivered at Chuka this 12th day of February, 2020

R.K. LIMO

JUDGE

12/2/2020

Ruling signed, dated and delivered in the open court in presence of Mugo for application and in absence of Respondent.

R.K. LIMO

JUDGE