



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
FAMILY DIVISION
SUCCESSION CAUSE NO. 758 OF 2011
IN THE MATTER OF THE ESTATE OF GODFREY MWEKA NGARU (DECEASED)
CONSOLIDATED WITH
SUCCESSION CAUSE NO. 757 OF 2011
IN THE MATTER OF THE ESTATE OF ZIPPORAH WANJIRU MWEKA (DECEASED)
AND
SUCCESSION CAUSE NO. 363 OF 2011
IN THE MATTER OF THE ESTATE OF ROBERT NDIINGURI MWEKA (DECEASED)
AND
SUCCESSION CAUSE NO. 1472 OF 2011
IN THE MATTER OF THE ESTATE OF STEPHEN MAINA MWEKA (DECEASED)
PATRICIA WANJIRU GITAU.....APPLICANT
VERSES
CATHERINE WANJIKU KAMAU.....1ST RESPONDENT
CYNTHIA WANJIRU MAINA.....2ND RESPONDENT

RULING

1. The deceased Godfrey Mweka Ngaru and the deceased Zipporah Wanjiru Mweka were husband and wife. They each died intestate, Godfrey on 30th May 1997 and Zipporah on 18th September 2003. They left the following children:-

- (a) William Muthama Mweka;
- (b) Stephen Maina Mweka (who died on 29th December 2010);
- (c) Robert Ndinguri Mweka (who died on 30th May 1997);
- (d) Maria Wangari Mweka;
- (e) Elizabeth Mwihaki Mweka; and

(f) Lydia Wanjiku Mweka.

2. Following **Succession Petitions Nos. 758 of 2011** and **757 of 2011**, respectively, a consent was recorded on the distribution of their estates. A certificate of confirmation was subsequently issued. One of the beneficiaries was the late Stephen Maina Mweka.
3. This ruling relates to the estate of Stephen Maina Mweka in **High Court Succession Cause No. 1472 of 2011** at Nairobi. Upon his death, his widow Catherine Wanjiku Kamau (1st respondent) and daughter Cynthia Wanjiru Maina (2nd respondent) petitioned this court for the grant of letters of administration intestate. A grant was issued to them on 2nd December 2011. The 1st respondent had indicated her other children as Geoffrey Mweka Maina and Dan Kamau Maina.
4. The applicant Patricia Wanjiru Gitau filed this application on 20th March 2018 (it was dated 14th March 2018) seeking under **section 76** of the **Law of Succession Act (Cap. 160)** to revoke the grant. Her case was that the respondents had concealed to the court that the deceased had another family; that they had not disclosed that the deceased had married her in December 1982 under Kikuyu customary law; and that the two had three children (Reuben Gitu Maina, Sharrif Mweka Maina and Charitan Wanjiru Maina). She stated that the petition had been filed without reference to her or her children, and the grant issued without her knowledge. The existence of her family, it was stated, was known to the respondents who failed to disclose the same to the court. This was fraudulent and intended to disinherit her and her children, she said.
5. No replying affidavit was filed. The factual basis of the application was therefore not challenged. I accept the facts that the deceased had another family which consisted of the applicant and her children. The facts were known to the respondents.
6. Under **section 51(2)(g)** of the **Act** and **rule 7(1)** of the **Probate and Administration Rules**, the respondents were required to indicate in their petition all the names and addresses of the beneficiaries, including the applicant and her children. The applicant was equally entitled to petition for the grant. She had not renounced her claim to petition for grant. Her consent was not sought at the filing of the petition. She was not cited. There was material non-disclosure of facts and fraud on the part of the respondents with the intention to disinherit the applicant and her children (**Matheka and Another –v- Matheka [2005]2KLR 455**). It is also evident that the petition was defective in substance.
7. The result is that I revoke the grant issued to the respondents on 2nd December 2011.
8. So that the matter does not stay in limbo, I issue a fresh grant in the joint names of the applicant Patricia Wanjiru Gitau and 1st respondent Catherine Wanjiku Maina. Both, or any of them, will be at liberty to immediately file and serve an application for the confirmation of the grant.
9. Costs of the application shall be borne by the respondents.

DATED and SIGNED at NAIROBI this 27TH day of FEBRUARY, 2020.

A.O. MUCHELULE

JUDGE

DATED and DELIVERED at NAIROBI this 2ND MARCH, 2020.

A.N. ONGERI

JUDGE