



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**MILIMANI LAW COURTS**

**FAMILY DIVISION**

**SUCCESSION CAUSE NO. 1537 OF 1992**

**IN THE MATTER OF THE ESTATE OF MARK BUDOHI KALEVERA (DECEASED)**

**LEONARD MISIGO.....1<sup>ST</sup> APPLICANT**

**JULIE KADENYEKA.....2<sup>ND</sup> APPLICANT**

**GRIFFIN MHYAHYA MTIVAS.....3<sup>RD</sup> APPLICANT**

**GIBSON GIMODE.....4<sup>TH</sup> APPLICANT**

**VERSUS**

**FRANCIS KIHIMA KALEVERA.....1<sup>ST</sup> RESPONDENT**

**MWANZI AYUB KALEVERA.....2<sup>ND</sup> RESPONDENT**

**EVERLYNE IMUNGU KALEVERA.....3<sup>RD</sup> RESPONDENT**

**RULING**

1. The deceased Mark Budohi Kalevera died intestate on 21<sup>st</sup> October 1991. He was survived by his mother Irene Ingasia, his wife Beatrice Kereka and three children: Francis Kihima Kalevera (1<sup>st</sup> respondent), Mwanzi Ayub Kalevera (2<sup>nd</sup> respondent) and Everlyne Imungu Kalevera (3<sup>rd</sup> respondent). The children were then minors. The deceased's mother, widow and the deceased's brother Leonard Misigo (1<sup>st</sup> applicant) petitioned the court for the grant of letters of administration intestate. They named the following properties to comprise the estate of the deceased:-

- (a) House No. 11, Ayany Estate in Nairobi;
- (b) 50 acres in Kitale;
- (c) 9 acres in Kitale;
- (d) 30 acres in Tongaren Settlement Fund Scheme; and
- (e) death gratuity at ABN Bank.

The grant was issued to them on 19<sup>th</sup> January 1993. The grant was confirmed on 23<sup>rd</sup> May 1997, and the following properties registered in the name of Irene Ingasia to hold in trust for the children of the deceased: Nairobi/block 62/298; Bungoma/Naitiri/347; 50 acres in Kitale; plot with house at Ongata Rongai.

2. Irene Ingasia died on 4<sup>th</sup> January 2006 and was substituted with Julie Kadenyeka. On 18<sup>th</sup> May 2010 the grant was revoked and a fresh grant issued to Leonard Misigo and the 1<sup>st</sup> respondent. The new grant confirmed so that Nairobi/Block 62/298 and the plot with House at Ongata Rongai went to the 3<sup>rd</sup> respondent; Bungoma/Naitiri/347 went to the 2<sup>nd</sup> respondent and 50 acres in Kitale went to the 1<sup>st</sup>

respondent. Each beneficiary had signed a consent on 10<sup>th</sup> June 2010 on the distribution of the estate. A certificate of confirmation was issued on 16<sup>th</sup> June 2010.

3. There is an application dated 4<sup>th</sup> May 2012 by the 1<sup>st</sup> applicant, Julie Kadenyeka (2<sup>nd</sup> applicant), Griffin Mhyahya Mtivas (3<sup>rd</sup> applicant) and Gibson Gimode (4<sup>th</sup> applicant) under **sections 45, 47 and 76** of the **Law of Succession Act** and **rules 44 and 73** of the **Probate and Administration Rules** seeking to revoke and/or annul the grant. The substance of the application is contained in the supporting affidavit sworn by the 1<sup>st</sup> applicant. He stated that the respondents caused the earlier confirmed grant to be changed and replaced with the new one whose effect was that they have inherited the property that belonged to their mother Irene Ingasia. The application to have the new confirmation was made by the 1<sup>st</sup> applicant and the 1<sup>st</sup> respondent. The 1<sup>st</sup> applicant states that he did not do this willingly; that he was forced to sign the application by Army Officers who were close confidants to the deceased.

4. I find no merit in this application. The 1<sup>st</sup> applicant was always the administrator of the estate of the deceased. He, the deceased's mother and the deceased's widow petitioned for the grant following the deceased's death. They declared then that the properties, he now claims to have belonged to his mother, belonged to the deceased. When the initial confirmation was done and certificate of confirmation issued, the mother (Irene Ingasia), him and the deceased's widow were to be registered to hold the properties in trust for the respondents. It is for these reasons that I find that his allegation that he was forced to apply for a fresh confirmation to transfer these properties to the respondents is false and an afterthought. In any case, why didn't he report the threats? Why wait for two years to complain?

5. The second application was dated 22<sup>nd</sup> March 2016 and brought by the 1<sup>st</sup> respondent. He applied under **section 76** of the **Act** and **rule 44(1)** of the **Rules** to have the grant as issued, rectified and confirmed to be revoked. He complained that the applicant is frustrating him in the administration of the estate. He wants him to be removed from the administration. He stated that the 50 acres of land in Kitale that he was given in the confirmed grant has been occupied by the 1<sup>st</sup> applicant and others, and that he was forced to file **High Court Civil Case No. 4 of 2012** at Kitale to obtain possession. Further, that the fact that the 1<sup>st</sup> applicant had sought to revoke the grant in the above application is further evidence of the frustration.

6. The 1<sup>st</sup> respondent got 50 acres by the distribution done in this cause to which the 1<sup>st</sup> applicant was a party. I have found in the foregoing that the claim by the 1<sup>st</sup> applicant that the 50 acres belonged to Irene Ingasia has no basis.

7. Secondly, the 1<sup>st</sup> applicant cannot be stopped from making any application, including application for revocation, if he has reasons to complain. But more important, these proceedings were for all purposes, concluded when a certificate of confirmation was issued. The grant that the 1<sup>st</sup> respondent seeks to be revoked was a joint one with him included. He cannot be fighting his own grant.

8. In conclusion, I find no merit in the application dated 4<sup>th</sup> May 2012 and the application dated 22<sup>nd</sup> March 2016. Each is dismissed with costs.

**DATED and DELIVERED electronically, following consent of the parties, at NAIROBI this 7<sup>TH</sup> day of MAY 2020**

**A.O. MUCHELULE**

**JUDGE**