



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUSIA

PROBATE & ADMINISTRATION NO. 192 OF 2010

IN THE ESTATE OF:

MARTIN JOSEPH WANDERA..... DECEASED

BETWEEN

1. MARY CONNIE TEBINO

2. LUCIA MAKIO OCHIENG.....JOINT ADMINISTRATORS

AND

JACKSON BARASA..... OBJECTOR

EUGENE DINDI OKEMOAPPLICANT

RULING

1. Eugene Dindi Okemo the applicant herein moved the court by way of summons for revocation or annulment of grant dated 13th June 2019 under section 76 of the Law of Succession Act and Rule 44 of Probate and Administration Rules. His application is premised on the following grounds:

- a) The proceedings to obtain the grant were defective in substance.
- b) That the deceased had made a will.
- c) That the grant was obtained fraudulently by making of a false statement or by concealment from court of material facts;
- d) That the grant was obtained by means of untrue allegation of a fact essential in a point of law to justify the grant by reason of ignorance or inadvertently;
- e) That the persons to whom the grant has been made have failed to proceed diligently with the administration of the estate;
- f) That the grant has become useless and inoperative through consequent circumstances.

2. The 1st Joint administrator opposed the application on grounds that:

- a) That the application is tainted with falsehoods.
- b) That the alleged will does not satisfy the legal requirements of a valid will.
- c) That the applicant herein has hindered the joint administrators from executing their mandate.

3. Lucia Makio Ochieng, the second co-administrator equally opposed the grant but cited frustration from the first co-administrator.

4. The following issues emerge from the parties' affidavits and submissions:

- a) Whether the deceased left behind a will;
- b) Whether the proceedings were commenced without the knowledge of the applicant;
- c) Whether the first joint administrator can be disqualified from being an heir by virtue of marriage; and
- d) Whether the application is merited.

5. Martin Joseph Wandera, the deceased herein, died on 1st November 1997. According to the applicant he came to know of the will in year 2016 after he was given the same by his late mother, Catherine Okiya Dindi.

6. Section 16 of the Law of Succession Act provides as follows:

Notwithstanding the provisions of this Part, every will, whether of movable or immovable property, and whether executed before or after the commencement of this Act, shall be treated as properly executed if its execution conformed, either at the time of execution or at the time of the testator's death, to the law in force—

(a) in the state where it was executed; or

(b) in the state where the property is situated; or

(c) in the state where, at the time of its execution or the testator's death, he was domiciled; or

(d) in a state of which the testator was a national either at the time of its execution or on his death.

7. Section 17 on the other hand provides for alterations in the following terms:

A will may be revoked or altered by the maker of it at any time when he is competent to dispose of his free property by will.

8. I have noted that the copy of the alleged will has several cancellations and alterations but this court cannot be able to tell who made them. Secondly, the alleged will is written by two different people.

9. It is highly doubtful if indeed the alleged will came from Catherine Okiya Dindi. She participated in this matter which is a clear indication that had there been a will, she would have brought this fact to the attention of the court.

10. The applicant does explain why he kept the will to himself from 2016 to 2019.

11. I make a finding that this application cannot turn on the point of the alleged will.

12. The applicant raised an issue of being referred to as EUGENE OKOMO DINDI instead of EUGENE OKEMO DINDI. I find this line of argument to be cheeky. I have perused the record and I have noted that his name in the proceedings and the documents filed herein, has been properly spelled.

13. The contention by the applicant that the proceedings herein were started without his knowledge is again cheeky. His mother was one of the parties together with her co-wife who instructed the firm of Ahmednassir Abdikadir & Company Advocates to represent them. He appears alongside other beneficiaries in the list provided to the court.

14. Section 29 (a) of the Law of Succession Act, which is relevant in the instant case, provides:

For the purposes of this Part, "dependant" means—

(a) the wife or wives, or former wife or wives, and the children of the deceased whether or not maintained by the deceased immediately prior to his death; [Emphasis added]

15. This provision is blind to the sex and marital status. It was well captured in **Re Estate of Solomon Ngatia Kariuki (Deceased) [2008] eKLR** Makhandia J (as he then was) stated:

The Law of Succession Act does not discriminate between the female and male children or married and unmarried daughters of the deceased person when it comes to the distribution of his estate. All children of the deceased are entitled to stake a claim to the deceased's estate. In seeking to disinherit the protestor under the guise that the protestor was married, her father, brothers and sisters were purportedly invoking a facet of an old Kikuyu Customary Law. Like most other customary laws in this country they are always biased against women and indeed they tend to bar married daughters from inheriting their father's estate. The justification of this rather archaic and primitive customary law demand appears to be that such married daughters should forego their father's inheritance because they are likely to enjoy the inheritance of their husband's side of the family.

16. The applicant's contention that it is only the male children who are supposed to inherit is fallacious and contrary to the Law of Succession Act. His customary law is inapplicable for it is discriminatory against the female members of the family.

17. The application is devoid of merits and it is accordingly dismissed with costs.

DELIVERED and SIGNED at BUSIA this 6th day of October, 2020.

KIARIE WAWERU KIARIE

JUDGE