



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

SUCCESSION CAUSE NO. 432 OF 2014

MATTER IN THE OF THE ESTATE OF CECILIA NTARA (DECEASED)

CATHERINE MUKIRI MWORIA.....APPLICANT

VERSUS

FELICITY MUKIRI NTHIGA.....RESPONDENT

AND

LAWRENCE MUNENE NTARA.....1ST PETITIONER

GLORY MAKANDI NTARA.....2ND PETITIONER

R U L I N G

1. **CECILIA NTARA** (“the deceased”) died on 21/02/2011. She was survived by her nine (9) children; **Catherine Nkatha Mworira, Glory Makandi Ntara, Juster Makena, Faith Kuri Ntara, Emily Karambu Ntara, Samuel Kinoti Ntara, Clifford Mugambi Ntara, Lawrence Munene Ntara** and **Alex Mutwiri Ntara**.
2. Her estate comprises of; **L. R. No. Ntima/Igoki/11-18, L. R. No. Ntima/Igoki/ Block 11/19** and **L. R. No. Ruiri/Rwarera/1003**, respectively.
3. The petitioners were issued with the grant letters of administration intestate on 07/06/2018 which was confirmed on 14/11/2018. The estate was divided equally amongst all the children of the deceased except **Alex Mutwiri Ntara** whose name was omitted.
4. On 1/2/2019, the respondent applied for the revocation of the grant on the grounds, inter alia, that the name of **Alex Mutwiri Ntara** had been left out from the distribution. She contended that at the time of confirmation, the said **Alex Mutwiri Ntara** was alive but was sadly involved in an accident on 10/12/2018 and passed on.
5. The respondent produced a limited grant *ad litem* issued in the **Mavoko SPM Succ. Cause No. 7 of 2019** over the estate of the said **Alex Mutwiri Ntara** on 31/1/2019. The application was shown to have been served upon **Ms. G. G. Mugambi Advocate** on 13/2/2019. The said advocate had appeared for the applicant, having filed an application dated 13/10/2016 and obtained orders in favour of the applicant against the aforesaid **Alex Mutwiri Ntara**.
6. The Court allowed the application and substituted the share of the aforesaid **Alex Mutwiri Ntara** with the name of the respondent.
7. Pursuant thereto, on 22/2/2019, the applicant applied to set aside the said orders vide an application of even date. That application came up for hearing on 13/3/2019 when it was allowed and ordered that the respondent’s application dated 01/02/2019 be heard afresh.
8. The parties filed their respective affidavits they together with their respective witnesses were cross-examined on them.
9. This Court has carefully considered the evidence on record and the submissions. The only issue that arises from the same is whether the respondent was a wife to **Alex Mutwiri Ntara** and therefore entitled to inherit his share in the estate.
10. After careful consideration, it is evident that that is an issue which cannot be properly decided in this Cause. The Cause herein concerns the estate of the late **Cecilia Ntara**, the mother of **Alex Mutwiri Ntara**. Since there was no dispute as to the entitlement of the aforesaid **Alex Mutwiri Ntara** to a share in the estate of the deceased, the best route should be that his share be retained in the distribution and the person entitled thereto be inserted after his estate is succeeded.

11. The application dated 1/2/2019 was provoked by the issuance of a fresh Certificate of grant on 14/11/2018. In that Certificate, the name of **Alex Mutwiri Ntara** was excluded. An earlier Certificate issued on 12/7/2018, all the names of the beneficiaries of the estate, including that of **Alex Mutwiri Ntara**, had been included. It is not clear how the subsequent Certificate of 14/11/2018 came about. The application was therefore made in good faith.

12. Accordingly, I strike out the Certificates of grant dated 14/11/2018 and 21/2/2019, respectively. The Certificate of grant remains as had been issued on 12/7/2018.

13. However, since the estate of the late **Alex Mutwiri Ntara** has not been succeeded, I order that there will be a stay of execution of the grant herein until the estate of **Alex Mutwiri Ntara** is fully succeeded.

14. When this matter was ongoing, the parties brought to the attention of this Court that a Cause, **Meru CM Succession Cause No. 96 of 2020, In the Matter of the Estate of Alex Mutwiri Ntara**, had been instituted. That is the proper forum where the beneficiaries of the late **Alex Mutwiri Ntara** can be determined.

15. Accordingly, the execution of the Certificate of Confirmation herein is hereby stayed until the hearing and determination of **Meru CM Succession Cause No. 96 of 2020, In the Matter of the Estate of Alex Mutwiri Ntara**.

16. Let the respondent herein file an objection in those proceedings and proof her case against the petitioner therein. It is only in that proceeding that the court can determine the status of the respondent and the sisters of the deceased and their respective interests in the estate of the late **Alex Mutwiri Ntara**.

17. In view of the circumstances obtaining in this case, I will make no order as to costs.

DATED and **DELIVERED** at Meru this 1st day of October, 2020.

A. MABEYA

JUDGE