



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

SUCCESSION CAUSE NO. 337 OF 2014

IN THE MATTER OF THE ESTATE OF RJW (DECEASED)

AW.....PETITIONER

VERSUS

EM

AS.....OBJECTORS/APPLICANTS

FW AND PETER PAUL MICHENI AS A TRUSTEE OF PEOPLE

HELPING PEOPLE FOUNDATION.....INTERESTED PARTY

RULING

1. **RJW** (“the deceased”) to whom Succession Cause relates died on 27/05/2013. Through the Chief’s letter of introduction dated 17/04/2014 it is stated that the deceased was survived by only her daughter Ann Watetu. Her assets were listed as:

- a) ***Land Parcel No. IGOJI/GIKUI/*** (3.6Ha)***
- b) ***Land Parcel No. IGOJI/GIKUI/*** (1.2Ha)***
- c) ***Equity Bank Mutonga Primary School A/C ********
- d) ***Meru Capital Sacco Mutonga Primary School A/C No. ********
- e) ***Personal Capital Sacco A/C plus shares A/C No. ********
- f) ***Personal Equity A/C No. ***** with pension***
- g) ***Safaricom Mobile ***** – MPESA Account***
- h) ***Safaricom Shares via Equity Bank No. EQBCC ********
- i) ***Mutonga Primary School Located on L.R. No. IGOJI/GIKUI/******
- j) ***Residential House and Farm on L. R. No. IGOJI/GIKUI/******

2. The petitioner petitioned for grant of letters of administration intestate which were granted to her on 23/10/2014 and then confirmed on 23/06/2015.

3. On 18/03/2019 summons for revocation of the grant dated 13/03/2019 were filed before this court. It was filed pursuant to **Sections 76 (a) (b) & (c) of the Law of Succession Act CAP 160 Laws of Kenya, Rules 44 (1), 49 and 73 of the Probate and Administration Rules**, and **Section 68 of the Land Registration Act 2012**. The applicants seek amongst other orders the revocation of the grant issued to the petitioner

and to cite one Peter Paul Micheni for intermeddling with the estate of the deceased.

4. The grounds upon which the application is grounded upon are in its body and supporting affidavit of AS sworn on 13/03/2019. It is contended that the grant was obtained fraudulently with concealment from the court that there were other beneficiaries. AS and FW who are sisters and orphans were adopted by the deceased as her children with the blessing of children department Igoji Office after a thorough background check.
5. They were not aware that the petitioner had filed and obtained grant of letters of administration. Soon after they noticed a number of happenings with the running of the deceased's school located on L.R. No. IGOJI/GIKUI/***. One Peter Micheni appeared as the administrator of the school and they were barred from even stepping there. There were also problems with payment of their fees. EK who was tasked with running of the school was ousted considering that she and her husband are also dependants.
6. The petitioner was an absentee daughter who is not a fit person to administer the estate for ill-health and drunkenness. Besides, the said Peter and two other whites posing as sponsors of the school have taken advantage of the petitioner's weakness. They placed a caution on the land resulting in the petitioner filing ELC 1/2019 at Nkubu Law Courts to have its removed. The suit is still pending.
7. This was opposed vide the replying affidavit of Ann Wawetu sworn on 3/04/2019. She deponed that the allegations raised by the objectors are false for she being the only child of the deceased; filed the proceedings properly, openly and made no false declarations. The deceased who owned land parcel Nos. IGOJI/GIKUI/*** and **** caused the same to be registered in their joint names. She has and is actively involved in the running of the school during the deceased's lifetime and up to date. The deceased was a philanthropist who extended her generosity by waiving fees payable by needy pupils such as the 2nd and 3rd objectors but did not adopted them as her children. The 1st objector, her aunt, was engaged as a teacher by the deceased at the school. After the deceased's death, she offered her accommodation in the main house since she was not a resident in Meru. She later expressed her desire to occupy the house but the 1st objector refused to vacate. Therefore, none of the objectors were ever adopted by the deceased.
8. The application was also opposed vide the replying affidavit of Peter Paul Micheni, Interested Party, sworn on 4/06/2019. He deponed that he is a trustee of People Helping Foundation which worked together and sponsored the deceased's school for the benefit of underprivileged children. The 2nd and 3rd objectors were among the beneficiaries who benefited from the initiative. In all his interactions with the deceased she spoke of having one child, the petitioner. Sometime in 2012 when the deceased's health started to deteriorate she invited him in his capacity to assist the petitioner in managing the affairs of the school.
9. After her demise, after confirmation of the grant on 23/06/2015 the charitable organization entered into an agreement with the petitioner dated 7/11/2015 to define their respective roles in so far as the running of the school is concerned. They further entered into another agreement dated 10/05/2018 intended to ensure smooth running and management of the school. On 23/02/2019 they entered into a sale agreement for purchase of L.R No. IGOJI/GIKUI/**** formerly 908 where the Interested Party has made substantial payments. Hence, he is not an intermeddler as alleged. The application is laced with malice and the objectors have not presented any evidence to demonstrate that the letters were acquired fraudulently and or material facts were not disclosed to the court before confirmation.
10. This application was heard vide *viva voce* evidence. The objectors called four (4) witnesses to establish their case.
11. **OW1 LEM** relied on her affidavit filed on 18/03/2019 and the annexures thereto and her statement dated 16/09/2019. She stated that the deceased was a sister to her mother. In 2003 when she had just completed her secondary education the deceased took her in as her daughter. The deceased took her under her wings, educated and lived with her up to her demise. After college she began to work as a teacher at the school built and run by the deceased.
12. The deceased also used to provide for the 2nd and 3rd objector as well as DK, who worked at the school and whom she married. It was the deceased who gave her out to her husband as her daughter. During her last moments the deceased said that she should be charged with running of the school and that none of her properties should be sold to a third party. They have been a close knit family running the sc
13. A year after the deceased's death they were chased out of the school which they were not allowed access. Then Peter Paul Micheni appeared as the administrator of the school. The objectors fell back on to nothing and the fees of the 2nd and 3rd objectors became a big problem. It is not true that the petitioner was the only beneficiary to the deceased's estate.
14. **OW2 DK**, wife to **OW1**, relied on his statement dated 16/09/2019. He stated that he got to know the deceased in 1999. When she started the school, she employed him in 2005 as general worker at the school who had no specific duty. The deceased trusted him to the extent that he was a signatory to one of the school's bank account. After marrying **OW1**, deceased took him in as a son and they began living in the deceased's house as well as 2nd and 3rd objector whom the deceased had adopted. She went to the children's office to adopt them but she died before it was completed. For all purposes the deceased adopted the objectors who were dependant on her. Her wishes were that none of them, her children, were to leave from any place. After her death the 1st and 2nd objector were to stay with the petitioner but he is the one in custody of them. They were being sponsored by Antonnella. He has an interest in the estate through **OW1**.
15. **OW2 AS**, twenty three (23) years of age and a student at [Particulars Withheld], relied on her statement dated 16/09/2019. She stated that all her life she has known no other parent other than the deceased who is her mother and no other home apart from LR OGOJI/GIKUI/***** where their family house is. That the deceased adopted her and her sister, FW and **OW1**. She even changed her name from W to S because her name was similar to the deceased to avoid confusion. The petitioner is a sister to them whom they used to visit in Nairobi. When the deceased died she and 3rd objector were left in the house with **OW1** together with her husband. The deceased's dying wish was that they co-exist peacefully on her estate.
16. After the deceased's death, the administrator who was at the school left and Peter Micheni replaced him and things began to change. On

14/05/2019 Peter Micheni and Charles Kinoti, headmaster of the school, led the school staff and other hired goons armed with pangas, hammers and nails came to their home pulled down the doors threw all their belongings and barricaded the gate there by denying them all access. They proceeded and made a report to the police but no help came their way.

17. **OW4 EK**, sister to the deceased, relied on her statement filed on 18/09/2019. She stated that in 2014 the deceased came and took away her daughter EM. Resulting to E and her husband DK being the deceased's children. At the same time she had adopted A and F whom she was responsible for their welfare ranging from shelter, education and other needs. She visited the deceased when she was very ill and her wish was that none of her properties ever be sold. When she died she left E, A, F and D living on her estate. The deceased used to run a successful school which the Interested Party is intermeddling with. It was her wish that her estate be distributed amongst the petitioner, objectors and DK.

18. At the close of their case the petitioner gave a sworn testimony and called one witness.

19. **PW1 AWM** relied and adopted her statement dated 21/09/2019 where she reiterated the contents of her replying affidavit sworn on 03/04/2019. She stated that she is the only child of the deceased who had no adopted children. If she had she would have provided for them and done so legally. The deceased caused her properties to be registered in their joint names and directed that she would inherit them entirely as it is attested by her in the document she wrote. After the deceased's death she instituted the cause with her uncles' as the guarantors by filing the cause which was prosecuted openly. The deceased did not leave a will but she left a document where she had listed all her properties and indicated that she was her only child (*Pet EXH 1*).

20. She was a charitable person who ran the school on minimum resources and never wanted to get profit. They got a donor who met the deceased before she died. After the death of the deceased they entered into an agreement with the donor ascertaining their roles. The 1st objector, stayed and taught at the school. The other objectors are among the orphans she helped get donors who would enable them to learn. They lived with a teacher within the compound and not in the deceased's house. Ken Goldenberg is the donor partnered with through People Helping People Organization to support the school. Peter Micheni is their representative of the NGO. For that reason, the Interested Party is not an intermeddler as he was made administrator after confirmation of the grant.

21. **PW2 JKM**, retired senior inspector of schools and brother to the deceased, relied and adopted his statement dated 23/09/2019 as his evidence. He confirmed that he and his brother DKK were involved as well as the family members who had knowledge of these proceedings. He stated that the petitioner is the only child of the deceased and the allegations that the deceased had adopted the objectors is false. The 1st objector is his niece and has been problematic all through. She was treated as an employee by the deceased and lived in a rented house and started cohabiting with DK. The 2nd and 3rd objector were some of the orphans the deceased catered for. They had a family meeting during the deceased's lifetime where it was resolved that the deceased's land would be registered in joint names of the deceased and her daughter, the petitioner. The deceased did not direct that her property be inherited by the objectors.

22. At the close of the petitioner's case the Interested Party called six witnesses who relied and adopted their statements each dated 19/09/2019.

23. **IPW1 Charles Kinoti**, a teacher at [Particulars Withheld] Primary School, stated that he has been a teacher at the school since 1999 which provides for the less fortunate children. As the school grew sponsors such as Antonella and the Interested Party funded it. The former is the sponsor who came and sponsored some of the pupils including the 2nd and 3rd objector who joined in 2004. At the time, the school was a day school and since the 2nd and 3rd objectors had no stable homes to go to after school, teachers volunteered to live with them awaiting construction of the boarding facility. At all material times the 2nd objector was known to him as ARSK. At no particular time was she known as ARW. In the year 2008, the deceased house was converted into a boarding facility to house girls who were KCPE candidates. This continued until when the facility was completed the girls were transferred there.

24. EM was employed as a teacher by the deceased in 2004 and she used to live in the deceased's house. She moved in 2007 when she got married to DK and went to live in a rented house at Igoji market but continued working at the school. When they encountered some financial distress in 2010 the deceased directed that they both move back into her house. But later moved out in 2012. The deceased ran the school with the assistance of her daughter, the petitioner. Sometime in 2012 when the deceased's health started deteriorating the petitioner and Interested Party took over the management of the school. At no one time did he see the objectors visiting and or taking care of the deceased neither are they her daughters as alleged.

25. **IPW2 Julius Kimathi**, teacher at [Particulars Withheld] Primary School, stated that he has been a teacher at the school since 2000. In February 2004 he was instructed by the deceased to go to the home of one GK and bring four children who included the 2nd and 3rd objector for care and protection during their schooling for they were orphans. When they were brought to the school they were allocated teachers who were tasked to take care of them. They would ensure that they attended school and had a place to stay after school pending construction of the dormitory. Once the dormitory was completed in 2009 the girls were transferred there. Later on AS decided to move in and live with EM and DK. At no point did A and F stay with the deceased neither did she treat them as her adopted children. E and D used to live in the school compound just like other members of staff. The deceased had only one child, the petitioner.

26. **IPW3 Anicia Kaimuri**, teacher at [Particulars Withheld] Primary School, stated that she has been a teacher at the school since 2001. She taught the 2nd and 3rd objector together with the other pupils. Since joining the school AS was known as such and at no point was she called W. She has worked at the school for nineteen (19) years and at no point were the two children introduced as the deceased's adopted children. The only child of the deceased is the petitioner.

27. **IPW4 AK** stated that she joined the school in 2009 as a cook until in May 2012 she was tasked with taking care and nursing the deceased until she died. In all the times the deceased was hospitalized, the 1st objector and Dickson only came to see the deceased once. At the mention of their names the deceased would become hostile and refused to see them. They left without seeing the deceased. The 2nd and 3rd objector only came to see the deceased between the months of February and March 2013 in the company of the other pupils at the school

when she had been discharged from hospital. The objectors never stayed with the deceased neither were they her adopted children. The petitioner is the only daughter of the deceased who was dedicated and frequently visited her and has never been a drunk.

28. **IPW5 JK** stated that he joined [Particulars Withheld] Primary School in 2009 as a member of the board of management. In early 2009 the deceased informed the board that she intends to introduce a willing sponsor, People Helping People Foundation, with the sole aim of partnering with the school for the benefit of the children. The board unanimously supported this and foundation joined the school's board of management. The deceased then relinquished her managerial position and delegated the same to her daughter, the petitioner. The latter then in 2011 requested the foundation that they co-manage the school up until later when the petitioner requested the foundation to solely and fully manage the school on condition that she sits on the school board. He has always known Edith Muthoni as the deceased's niece and her husband as a member of staff. At no time did the deceased ever acknowledge having adopted A and F.

29. **IPW6 Peter Paul Mucheni** relied and reiterated what he had stated in his replying affidavit sworn on 4/06/2019. He stated that the foundation and [Particulars Withheld] Primary School partnered in 2009. In 2011 the deceased requested the foundation to have a more active role in the management of the school. Since 2011 to 2012 the school was co-managed by the deceased and himself as the representative of the foundation. When the deceased started ailing the petitioner being the daughter of the deceased stepped in for her. They did so together until late 2013 when the petitioner requested the foundation to solely and fully manage the school on condition that she sits on the school's board of management. They agreed to her request. The foundation and the school entered into formal agreements dated 7/11/2015 and 11/05/2018 defining their rights and obligations of the parties of the school. On 1/05/2018 the petitioner offered to transfer ownership of the school and dispose of all its assets in favour of the foundation. They entered into a sale agreement dated 22/02/2019. All the agreements they entered into happened after confirmation of the grant therefore he is not an intermeddler. Moreover, at no time did the deceased treat or introduce the 2nd and 3rd objector as her adopted children. As for the 1st objector she is a niece of the deceased and member of staff.

30. The parties herein filed their written submissions at the conclusion of the oral evidence. At the time of writing this only the objectors and Interested Party had filed their submissions which this court has thoroughly perused and taken due consideration of.

31. The issues of determination are:

- a) *Whether the objectors are beneficiaries/dependants of the estate of the deceased*
- b) *Whether the Interested Party is an intermeddler*
- c) *Whether revocation of the grant is merited*

32. **Section 29 of the Law of Succession Act** defines who a dependant is as follows:

“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;

(b) such of the deceased's parents, step-parents, grand-parents, grandchildren, step-children, children whom the deceased had taken into his family as his own, brothers and sisters, and half-brothers and half-sisters, as were being maintained by the deceased immediately prior to his death; and

(c) where the deceased was a woman, her husband if he was being maintained by her immediately prior to the date of her death.”

33. Based on the definition a biological child of deceased person is automatically considered as a dependant whether or not s/he was being maintained by the deceased immediately prior to his/her death. Therefore, the petitioner is a dependant of the deceased.

34. The objectors have alleged that they are children of the deceased for she had taken them in as her own. Being that they allege that they were children of the deceased for she had taken them in as her own and were being maintained by her burden is placed on them to prove so. For whoever alleges and desires the court to entire judgment in their favour must prove. **Section 107 of evidence Act** succinctly states:

“(1) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.

(2) When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.”

And **Section 108 of Evidence Act**, further states:

“The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.”

35. According to the 1st objector's assertion the deceased took her from her parents' home in 2003 when she had completed secondary education and she educated her and stayed with her until her demise. This was corroborated by her mother **OW4**. This allegation was refuted by the Petitioner and the Interested Party who stated that the 1st Objector was employed as a teacher by the deceased.

36. When the 1st objector gave her evidence on 24/09/2019 she stated that the deceased took her in 2003 but according to **OW4** she stated that it was in 2014. The 1st objector stated that the deceased took her in as a daughter and during her wedding to **OW2** she was the one who gave her away. **OW2** alleged that he knew the 1st objector as the adopted daughter of the deceased and only came to meet 1st objector's parents two years after the wedding. According to the 1st objector when **OW2** was paying dowry it was paid to her parents and part of it to the deceased. If that is so, how come **OW2** told the court that he only met the 1st objector's parents two years after the wedding bearing in mind that dowry was paid to her parents' which is usually a ceremonial process that is one on a face to face basis. Furthermore, the 1st objector was educated by her parents and before getting married to **OW2** she was previously married and sired two boys. After the separation she returned to her parents' home where the boys stay.

37. As for the 2nd and 3rd objectors, it is argued the sisters were taken in by the deceased when they were very young and she adopted them as her children. That the deceased had initiated the process of adoption but she did not complete it before she died. The 2nd objector even went ahead and changed her name from Wangui to Sangui so as to avoid confusion between her and the deceased.

38. The petitioner and Interested Party denied these averments for it was their submissions that the two children were among the orphans whom the deceased helped and attended her school. **IPW1, IPW2** and **IPW3** who are teachers at the school confirmed that the children were pupils at the school who were sponsored. The children did not stay with the deceased but stayed with teachers who had been allocated to them. After the school dormitory was completed they moved there. **IPW4** who was a cook and the deceased's care giver and who was with her always confirmed that neither of the children lived with the deceased and they were not adopted by her.

39. The process of adopting the 2nd and 3rd objector was said to have been initiated at the Children's department at Igoji Office. No evidence of this was produced to show that the deceased had began the process or that she had been given the blessing of the office after a thorough background check to adopt them. Neither was a children officer from the said office called as witness to ascertain and corroborate their averments. Furthermore, if indeed the 2nd objector changed her name no records were produced to evidence this considering the process of changing one's name is a legal one that is well documented from the beginning to the end.

40. The deceased did not leave a will. But prior to her death in 2013 in 2011 had her two land parcels IGOJI/GIKU/1182 and 908 registered in the joint names of the petitioner and her. **Section 60 of the Land Registration Act** provides:

"If any of the joint tenants of any land, lease or charge dies, the Registrar shall, upon proof of death delete the name of the deceased tenant from the register by registering the death certificate."

This means that where there is joint ownership, upon the death of one of the owners, the surviving owner automatically becomes the owner. The property automatically passes to the surviving joint owner. In this case it is the Petitioner. This principle of survivorship over jointly owned property operates to exclude the property from the Law of Succession Act upon the death of one of the joint owners. See **In re Estate of Johnson Njogu Gichohi (Deceased) [2018] eKLR**. If indeed the deceased sought to have the school which is located on Parcel No. 908 be run by **OW1** why then did she result in having it registered jointly with her daughter.

41. From the foregoing, I am of the view that the objectors have alleged to be daughters of the deceased but have failed to prove the same. The 1st objector, a relative of the deceased, was helped by her through employment but not in the capacity of a daughter considering that her parents are alive. The fact that the deceased was related to her and she worked for her for quite some time does not mean that she qualifies to be a child.

42. As for the 2nd and 3rd objectors, evidence provided by the petitioner and Interested Parties show that they were less fortunate children whom the deceased helped. It is evident that the deceased was a generous woman who generously helped the objectors among other children but they have turned against her only child to disposes her of her inheritance. This court finds that the objectors are not dependants of the deceased.

43. The second issue is whether the Interested Party is an intermeddler of the estate.

44. **Section 45 (1) of the Succession Act** states:

"(1) Except so far as expressly authorized by this Act, or by any other written law, or by a grant of representation under this Act, no person shall, for any purpose, take possession or dispose of, or otherwise intermeddle with, any free property of a deceased person."

In the case of **Benson Mutuma Muriungi v C.E.O. Kenya Police Sacco & another [2016] eKLR** F. Gikonyo J observed as follows:

"[5] There is no specific definition of the term intermeddling provided in the Law of Succession Act. The Act simply prohibits taking possession of or disposing of, or otherwise intermeddling with, any free property of a deceased person by any person unless with the express authority of the Act, any other written law or a grant of representation under the Act. But in my understanding, the use of wide and general terms such as; "for any purpose" and "or otherwise intermeddle with" in the Act portends that the category of the offensive acts which would amount to intermeddling is not heretically closed or limited to taking possession and disposing of the property of the deceased. I would include in that category such acts as; taking possession, or occupation of, disposing of, transferring, exchanging, receiving, paying out, distributing, donating, charging or mortgaging, leasing out, interfering with existing lawful liens or charge or mortgage of the free property of the deceased in contravention of the Law of Succession Act or any other written law. I do not pretend to close the list either or make it exhaustive. The list could be long. However, any act or acts which will dissipate or diminish or put at risk the free property of the deceased are acts of intermeddling in law."

The Interested Party is a sponsor of the school and was involved in such a capacity. The objectors in their submissions stated he has no *locus standi* in these proceedings. I must say that this has already been overtaken by events for the Interested Party filed an application dated 3/04/2019 seeking to be enjoined which was dealt with.

45. The grant was confirmed on 23/06/2015. The Interested Party was involved in the school as a sponsor prior to the death of the deceased. Their roles were properly defined when they entered into agreements dated 7/11/2015 and 11/05/2018. This happened after confirmation of the grant as well as the sale agreement dated 22/02/2019. Consequently, the Interested Party may not be said to be an intermeddler for their actions happened after confirmation of the grant.

46. The third issue is whether revocation of the grant is merited. A grant may only be revoked based on the grounds laid down under **Section 76 of the Law of Succession Act**. From the foregoing, the objectors are not dependants of the deceased and the Interested Party is not an intermeddler of the estate. As a result, the grounds raised by the objectors based on the grant having been obtained fraudulently and by means of untrue allegation have no merit.

47. The Application dated 18/3/2019 is dismissed with no orders as to costs.

HON ANNE ADWERA ONG'INJO

JUDGE

RULING SIGNED, DATED AND DELIVERED BY EMAIL AND ORALLY THOROUGH MICORSOFT TEAM ON THIS 1ST DAY OF OCTOBER 2020

HON ANNE ADWERA ONG'INJO

JUDGE

In the presence of:

C/A: Kinoti

Mr Mokuu Advocate for Objectors/Applicants – NA

Ms Malosoy Advocate for Interested Party

Mr Ringera Advocate for Petitioner

MS Njue Advocate for Appellant/Holding brief for Njeru Advocate for Appellant.

HON ANNE ADWERA ONG'INJO

JUDGE