



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MAKUENI**

**HIGH COURT P&A. NO. 185 OF 2017**

**IN THE MATTER OF THE ESTATE OF KASOA MBULU (DECEASED)**

**MOURICE WAMBUA KASOA aka**

**BENSON WAMBUA KASOA.....APPLICANT**

**-VERSUS-**

**BENJAMIN MWOLOLO KASOA.....RESPONDENT**

**RULING**

1. By Application (summons) dated 19/09/2018 the Applicant seek the following orders:-

- 1) **THAT** the Honourable court be pleased to revoke the Grant of Letters of Administration issued to BENJAMIN MWOLOLO KASOA vide High Court Machakos Succession Cause No. 39 of 2011.
- 2) **THAT** in the alternative to prayer one (1) above, this Honourable Court be pleased to appoint MOURICE WAMBUA KASOA aka BENSON WAMBUA KASOA as a Co-Administrator to the estate of the late Kasoa Mbulu.
- 3) **THAT** subsequent to prayer two (2) above, the Honourable court direct parties to henceforth petition this Honourable court for confirmation of Grant within 60 days after the ruling herein.
- 4) **THAT** the costs of this application be in the cause.

2. Same is supported by grounds namely:-

- a) **That** the Objector and the Respondent are the only surviving children of the deceased together with nephews to his other deceased brother.
- b) **That** at the time of petitioning for Grant of Letters of Administration in the year 2011, the Respondent not only failed to consult and seek the Objector's consent prior to petitioning for Letters of Administration but also intentionally failed to include the Objector as one of the Administrator to the estate of the deceased.
- c) **That** as such, the Objector has been excluded from the day today management of the estate of the deceased yet he is a bonafide beneficiary thus prejudicing his interest in the estate.
- d) **That** further, the Respondent has sluggishly handled the succession proceedings as if the same was his personal matter and failed to inform all beneficiaries to the estate of the deceased on the progress of this matter to their detriment.
- e) **That** despite being granted Grant of Letters of Administration in respect of the estate of the deceased and notwithstanding the fact that this matter was Gazetted on 16<sup>th</sup> September, 2011, the Respondent has slept on his statutory duties as he has made no efforts for over 7 years to convene a family meeting to discuss the mode of distribution, file summons for confirmation of grant and have the estate of the deceased finally administered.
- f) **That** from the foregoing, it is fair and in the interest of justice that the orders sought be granted to enable the Objector actively participate in the proceedings herein and provide alternative leadership that is clearly missing to finally administer the estate of the

deceased and distribute the estate accordingly.

3. It is also anchored on the Affidavit of Mourice Wambua Kasoa sworn on 19/09/2018 which reiterates same grounds.

4. The Application is opposed by Affidavit of Benjamin Mwololo Kasoa sworn on 16/10/2018 which depones:-

- 1) **THAT** the Respondent come from the 1<sup>st</sup> family while the Applicant's father Benson Wambua Kasoa comes from the 2<sup>nd</sup> family.
- 2) **THAT** amongst all the children of the deceased only two are alive, that is, Benjamin Mwololo (Respondent) and Benson Wambua.
- 3) **THAT** the land parcel NZAU/MASUMBA/440 was divided amongst the deceased's three (sons) Benjamin Mwololo, Mbithi Kasoa and Benson Kasoa.
- 4) **THAT** Mbithi Kasoa is now deceased and was survived by wife Alice Muue Mbithi.
- 5) **THAT** at the time of filing the succession because all parties were involved.
- 6) **THAT** upon being issued with the grant, the Respondent have tried his best to engage his brother to come and discuss the mode of distribution but to no avail all his efforts have to bore fruits.
- 7) **THAT** the Respondent have also pursued the same through the local administration but his brother has proved difficult.
- 8) **THAT** the land parcel has already been encroached and grabbed by persons namely Cosmos Moto Malangu, Julius Mutulu Matungu and Gideon Malungu.
- 9) **THAT** the Respondent has tried to engage his brother for purposes of ensuring they resolve the issue but he do not success.
- 10) **THAT** the Respondent has not slept on his job as an administrator and the delay has been occasioned by the high handedness of his brother.
- 11) **THAT** Applicant's son Maurice Wambua Kasoa cannot be a co-administrator since his father is alive and capable of giving consent on the mode of distribution.
- 12) **THAT** it is only fair and just that the Applicant does co-operate with the Respondent and the other beneficiary Alice Muue Mbithi and agree on the mode of distribution.
- 13) **THAT** as an administrator he is ready and willing to present before this Honourable court an application for confirmation of grant without any further delay and annex therefore the mode of distribution in favor of all beneficiaries.

#### **ISSUES, ANALYSIS AND DETERMINATION**

5. The singular issue herein is whether the applicant application has merit?

6. Under Section 66. L S A ".....***When a deceased has died intestate, the court shall, save as otherwise expressly provided, have a final discretion as to the person or persons to whom a grant of letters of administration shall, in the best interests of all concerned, be made, but shall, without prejudice to that discretion, accept as a general guide the following order of preference—***

***a. surviving spouse or spouses, with or without association of other beneficiaries;***

***b. other beneficiaries entitled on intestacy, with priority according to their respective beneficial interests as provided by Part V;***

***c. the Public Trustee; and***

***d. creditors;***

***e. provided that, where there is partial intestacy, letters of administration in respect of the intestate estate shall be granted to any executor or executors who prove the will."***

7. The Applicant/Objector and the Petitioners being brothers, rank equally in the priority of applying the grant. To expedite the instant matter I will save parties time by ordering the grants herein be rectified and reissued with Applicant and Objectors as the Co-Administrators.

8. They shall apply for confirmation of grant with 45 days with affidavit showing mode of distribution. In event on disagreement of distribution of the estate, each beneficiary to put his or her own affidavit.

**DATED, DELIVERED, SIGNED THIS 7<sup>TH</sup> DAY OF FEBRUARY, 2019, IN OPEN COURT.**

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**HON. C. KARIUKI**

**JUDGE**