



**REPUBLIC OF KENYA**

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

**SUCCESSION NO. 523 OF 2013**

**IN THE MATTER OF THE ESTATE OF JOSHUA KAMONDE NDEGWA .. DCD**

**CHRISTOPHER NJOGU KAMONDE.....1<sup>ST</sup> APPLICANT**

**MOSES GITHINJI MUNENE.....2<sup>ND</sup> APPLICANT**

**JOSEPH KITHAKA KAMONDE.....3<sup>RD</sup> APPLICANT**

**V E R S U S**

**MARY WANJIRU GICHARU.....RESPONDENT/PETITIONER**

**RULING**

1. This is an old matter which has been pending in court since 2009. It relates to the estate of Joshua Kamonde (deceased). A Grant of Letters of Administration was issued to Mary Wanjiru Gicharu on 8/7/2009. The petitioner and she applied for confirmation of the grant on 12/07/2009. This application has been pending determination in this court.

2. There are two other applications which were filed.

- **Summons for revocation of grant dated 07/07/2010**
- **Summons for revocation of grant dated 17/06/2013**

**Confirmation of grant dated 12/07/2009**

The petitioner sought to distribute the deceased estate **L.R No. Kabare/Nyagati/1493** be registered in her name.

3. On 08/11/2017, the advocate for the petitioner indicated that the sisters have agreed that the estate be shared equally by the four sisters Esther Micere, Veronica Wamaitha, Peninah Kamonde and the petitioner.

**Summons for revocation of grant dated 07/07/2010**

It was filed by 3 objectors Christopher Kamonde, Moses Munene and Josphat Kamonde who claimed that the grant was obtained through fraud since the petitioner did not serve them with citation of the pleadings as required. That the signatures in the application for grant are forgeries and she has left out some beneficiaries.

4. In response, the petitioner filed a Replying Affidavit sworn on 17/3/11 where she stated that the deceased had shared out his land inter vivos to the 1<sup>st</sup> and 3<sup>rd</sup> objectors including also the 2<sup>nd</sup> objector's father. That the 2<sup>nd</sup> objector is not a beneficiary of the estate.

**Summons for revocation of grant dated 17/06/2013**

It was filed by Peninah Kamonde who is a step-sister of the petitioner in view of the fact that the deceased had three wives. She sought that the grant be confirmed jointly between the petitioner and herself.

In response, the petitioner stated that the application is time barred under **Rule 40(6) of the Probate and Administration Rules and Gazette Notice No. 5662 dated 05/06/2009**.

## **Proceedings**

On 03/03/2016, the court directed that the application dated 07/07/2010 be heard by way of viva voce evidence.

6. On 02/05/2017, the Court was informed by the objectors' advocates that one of the objectors is deceased and he is in the process of substituting him. The petitioner however stated that the matter was coming up for hearing of summons for revocation of grant dated 07/07/2010 which the court had directed be by way of oral evidence.

7. The objectors advocates informed court that he lost touch with the 1<sup>st</sup> objector, the 3<sup>rd</sup> objector is paralyzed and that the 2<sup>nd</sup> objector passed away that year and they were in the process of substituting him. The Court ordered that the objector be substituted within 30 days.

8. On 22/06/2017, the court was informed that the application will proceed with the 1<sup>st</sup> objector and hearing date given for 08/11/2017. On the said date, the summons for revocation of grant was dismissed for non attendance and summons for confirmation of grant given date for 15/02/2018. It did not proceed as the court was not sitting.

9. On 26/09/2018, advocate for the objectors sought for time to substitute two of the objectors who have passed away. The application was objected by the advocate for the petitioner on ground that they have been exchanging correspondence since November 2016 because of the deceased protestors and two years down the line nothing has been done. That the last protestor is not even in court. By then the application for revocation of grant had been dismissed on 8/11/17.

10. Since the protestors died, their advocates have indicated that they need to substitute but no application has since been filed despite the court giving them 30 days for substitution. ***Equity aids the vigilant not the indolent.***

11. The claims by the objectors has abated as they were not substituted and the application for revocation of grant was dismissed.

12. On 26/9/2018 when the matter came for the hearing of the summons for confirmation of grant, none of the objectors was in court.

13. I find that the application for confirmation of grant should be allowed since the protestor Peninah agreed to share the estate with her sisters.

14. I order that the application dated 12/7/2009 is allowed as prayed. The estate of the deceased be distributed equally among the daughters of the deceased that it is Ester Micere, Veronica Wamaitha, Peninah Kamonde and the petitioner as this court was informed on 8/11/2017 that the sisters had agree that the estate be shared equally amongst them.

15. The application for revocation of grant was dismissed for having abated and for none attendance by the objector to prosecute.

I make no orders as to costs.

**Dated at Kerugoya this 8<sup>th</sup> day of March 2019.**

**Ruling Read out in open court.**

**L. W. GITARI**

**JUDGE**