



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

SUCCESSION CAUSE NO. 536 OF 2004

IN THE MATTER OF THE ESTATE OF M'KUNGANIA M'MBUI (DECEASED)

JULIUS MUTHOMI M'KUNGANIA.....ADMINISTRATOR

VERSUS

SUSAN KINANU KUNGANIA.....1ST APPLICANT

HELLEN NKUENE.....2ND APPLICANT

GATWIRI DANIEL.....3RD APPLICANT

KARIMI KUNGANIA.....4TH APPLICANT

RULING

1. On 13th December 2018, this Court delivered its judgment whereby it distributed the estate of the deceased. In its judgment, the court acknowledged that it was not able to ascertain from the record the correct beneficiaries of the estate were
2. This was because, those beneficiaries listed by the administrator, **Julius Muthomi M'Kungania** as children of **Jennifer Kajuju** and the deceased were listed as grandchildren of the deceased in the introduction letter by the Chief, Igoki location dated 6th December 2004.
3. However, since the petitioner, **Kirimi M'Kungania** was alleged to have been served with the protest and had not responded thereto, the court proceeded to distribute the estate to all those who were set out as children of the deceased by **Julius Muthomi M'Kungania** in his protest. The court also appointed **Julius Muthomi M'Kungania** as the administrator of the estate.
4. By an application dated 28th March, 2019, the applicants applied for the revocation and/or annulment of grant. The same was supported by the sworn Affidavit of **Susan Kinanu Kungania**, a daughter of the deceased. The applicants contended that the petitioner was never served with the aforesaid protest.
5. The applicants further contended that some of the beneficiaries that were shown as children of the deceased were actually children of **Jennifer Kajuju** who was a daughter of **Virginia Thuguchi** (wife of the deceased). That **Jennifer Kajuju** was not the third wife of the deceased as was alleged by the administrator. That the deceased had only two wives, **Grace Kanyamu** and **Virginia Thiguchi Kungania**.
6. The administrator replied to the said application vide his replying affidavit sworn on 12th April 2019. He contended that the court was correct in its determination He denied that he had concealed to the petitioner the filing of the protest as alleged by the objectors.
7. The application was urged by way of written submissions which this court has considered. The issue for determination is **whether Jennifer Kajuju Kungania was a wife or a daughter of the deceased. Who the real and correct beneficiaries of the estate of the deceased are:**
8. Firstly, the letter of introduction from the Chief dated 6th December 2004, listed **Jennifer Kinanu** (*Jennifer Kinanu, Jennifer Kajuju and Jennifer Kajuju Kungania are one and the same person*) as a daughter of the deceased. It also listed **Virginia Thiguchi Kungania** as a wife of the deceased. On 5th July 2006, the petitioner swore an affidavit stating that **Jennifer Kajuju Kungania** is a daughter of the deceased.
9. Secondly, in his affidavit dated 27th June 2007, the administrator admitted in paragraph 4 thereof that **Jennifer Kajuju** was a daughter of the deceased. He attached a letter from a family meeting that confirmed that the deceased left behind two wives i.e. **Grace Kanyamu** and **Virginia Thuguchi**. There was no indication at all that **Jennifer Kajuju** was a wife of the deceased.

10. I find that there is a glaring conflict between the administrator's affidavit dated 27th June, 2017 and his affidavit of 15th October, 2018. One mentions **Jennifer Kajuju** as a daughter to the deceased whereas the other mentions her as a spouse of the deceased.

11. On being confronted with the affidavit of **Susan Kinanu Kungania** of 28th March, 2018 that **Jennifer Kajuju** was a daughter and not a wife of the deceased and that about six of those shown to be children of the deceased were but grandchildren, the administrator chose to keep silent. He failed to address those allegations. In this regard, those assertions remained uncontroverted and they are to be deemed to be true.

12. Accordingly, I make a finding that **Jennifer Kajuju** was/is a daughter of the deceased and **Julius Muthomi, Mercy Gacheri, Dorothy Kagendo, Dennis Kimathi, Nanis Kinya and Morris Gitonga** are grandchildren of the deceased.

13. Under **section 76 of the Law of Succession Act, Cap 160 Laws of Kenya ("the Act")**, mistake, fraud and concealment of a material fact are grounds for revocation of grant whether confirmed or not.

14. In this case, it is clear that the administrator misled this court by enlisting himself and **Mercy Gaceri, Dorothy Kagendo, Denis Kimathi, Kinya Nanis and Gitonga Moris** as sons and daughters of the deceased whereas they were but grandchildren of the deceased. He also blatantly misled the court that **Jennifer Kajuju** was a wife of the deceased yet he very well knew that she was a daughter of the deceased. It is therefore highly doubtful if at all the protest was ever served upon the 4th applicant as alleged by the administrator.

15. The position of grandchildren with reference to estates of their grandparents was dealt with by Musyoka J. in **the Matter of the estate of Veronica Njoki Wakagoto (Deceased) [2013] eKLR** as follows:-

"....Under Part V, grandchildren have not right to inherit their grandparents who die intestate after 1st July 1981. The argument is that such grandchildren should inherit from their own parents. This means that the grandchildren can only inherit their grandparents' indirectly through their own parents, the children of the deceased. The children inherit first and thereafter grandchildren inherit from the children. The only time grandchildren inherit directly from their grandparents is when the grandchildren's own parents are dead. The grandchildren step into the shoes of their parents and take directly the share that ought to have gone to the said parents."

16. The same position was also reiterated in **re Estate of Joyce Kanjiru Njiru (Deceased) [2017] eKLR**.

17. The rectified Certificate of Confirmation of grant has already been issued to the administrator. The same is however defective in that, it lists the grandchildren of the deceased as beneficiaries of the estate on the mistaken belief that they were children of the deceased.

18. I am therefore inclined to revoke the grant that was issued to the administrator as it was so issued through misrepresentation.

19. Having determined the position of **Jennifer Kajuju**, it is not difficult to determine then who the correct beneficiaries of the deceased are. The beneficiaries should only be the children of the deceased from the two houses. These are as set out in the letter of introduction by the Chief of Igoki Location dated 6th December, 2004. The estate of the deceased is to be distributed to them equally.

20. The application by the applicants is therefore meritorious and I allow the same. I make the following orders:-

a) the grant issued on 13th December, 2018 to **Julius Muthomi M'Kungania** be and is hereby revoked;

b) a fresh grant is issued to **Susan Kinanu Kungania** and **Kirimi Kungania** to be joint administrators of the estate of the deceased.

c) the estate of the deceased is hereby distributed as follows:-

ABOGETA/U-UCHUURE/1650 (2 Acres)

a) Grace Kanyamu

b) Kirimi Kungania

c) Hellen Nkuene

d) Sibora Gatwiri

e) Susan Kinanu

f) Jennifer Kinanu

g) Julius Mwiti

h) Charity Kinanu

i) Penina Kathambi

j) Felicity Karambu

k) Elizabeth Gatwiri

d) this being a family matter, I hesitate to order any costs.

It is so ordered.

DATED and DELIVERED at Meru this 6th day of June, 2019.

A. MABEYA

JUDGE