



**REPUBLIC OF KENYA**

**IN THE HIGH COURT AT NAIROBI**

**(FAMILY DIVISION)**

**SUCCESSION CAUSE NO 1120 OF 2014**

**IN THE MATTER OF THE ESTATE OF MANFRED JOHN ONYANGO (DECEASED)**

**ALICE AMONDI OCHIENG .....1<sup>ST</sup> PETITIONER**

**CHARLES OBILA OKUDO.....2<sup>ND</sup> PETITIONER**

**AND**

**JOSEPH MESSI MBAYI .....APPLICANT**

**R U L I N G**

1. The application pending before court is a summons for revocation of grant dated 17<sup>th</sup> May 2019 by one Joseph Messi Mbayi. He seeks to have the grant issued to Alice Amondi Ochieng and Charles Obila Okudo revoked and annulled and thereafter he be appointed in place of Charles Obila Okudo ostensibly as a co-Administrator with Alice Amondi Ochieng.

2. His application is based on grounds that he is a son of the deceased, and therefore entitled as a beneficiary and co-administrator and that his efforts to be enjoined as a beneficiary and a co-administrator have been futile as the 1<sup>st</sup> Administrator is determined to exclude him. Further the grant was fraudulently obtained by means of false allegations and concealment of material facts.

3. The application is objected to by way of a Replying affidavit sworn by Alice Amondi Ochieng the 1<sup>st</sup> Petitioner and widow of the deceased. She deponed that her application for grant of representation was all inclusive of the dependants and beneficiaries of the estate known to her at the time of applying for the same; further she deponed that she was not aware of the relationship between the deceased, and the applicant and further there are no plausible grounds for revocation of grant.

4. **Section 66 of the Law of Succession Act** provides as follows:

**“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.**

5. **Section 58(1)** on the other hand provides that;

**(1) Where a continuing trust arises-**

**(a) No grant of letters of administration in respect of an estate shall be made to one person alone except where that person is the public trustee or a trust corporation.**

6. **Part V-351(a) & (2)** gives preference to the interest of a surviving spouse.

7. On record is a letter dated 20<sup>th</sup> March 2014 from an area Chief of Kayole North where the deceased Manfred John Onyango was resident.

The same gives names of the wife and children of the deceased. Based on the above the court issued a grant on the 23<sup>rd</sup> of October, 2018 to the widow and as second person as nominated by the widow to be a co-administrator.

8. Annexed and in support of the current application are letters from Deputy County Commissioner's office introducing two additional of beneficiaries namely; Tracy Odongo Matwaka and Melvin Mbayi and a birth certificate of one Messi Joseph Mbayi is equally annexed.

9. The questions lingering in the court's mind for now are whether Melvin Mbayi is the same person as Messi Joseph Mbayi if so why the difference in names? Secondly who signed the letter from the Deputy County Commissioner's office and thirdly why would the two letters differ.

10. The above aside, the issue before court is whether or not to revoke the grant of letters of and replace the 2<sup>nd</sup> administrator with the applicant.

11. Tracy Odongo Matwaka has not asked to be enjoined as a co administrator. Further, she has not claimed nor is there evidence that she was ever married to the deceased and effort to try and tag her along is by her son.

Is she a widow/was she a wife or did she merely sire a child with the deceased? All these queries being raised by the court remain unanswered for now.

12. For the above reasons, I find that the 1<sup>st</sup> administrator ranks in priority to other beneficiaries. Secondly the Applicant herein has conflicting information on names, no clarifications were made. In my view the applicant should be more concerned with how the estate will be distributed. If he has a bonafide interest in the estate he should seek for provision at the point of confirmation and distribution wherein he will prove his claim. The job of the administrator is to collect and preserve the estate for now I see no reason for replacing any of them.

13. Consequently the application is declined.

Costs in the cause.

**Dated and Delivered in Nairobi on this 17<sup>TH</sup> day of OCTOBER, 2019.**

.....

**ALI-ARONI**

**JUDGE**