



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MERU**

**SUCCESSION CAUSE NO. 18 OF 2001**

**IN THE MATTER OF THE ESTATE OF STEPHEN KIRIMA SILAS (DECEASED)**

**GRACE CATHERINE NTINYARI.....1<sup>ST</sup> OBJECTOR/APPLICANT**

**LILIAN KARIMI STEPHEN.....2<sup>ND</sup> OBJECTOR/APPLICANT**

**ROSELINE MAKENA MUTWIRI.....3<sup>RD</sup> OBJECTOR/APPLICANT**

**VERSUS**

**MURITHI R.M.W. STEPHEN.....PETITIONER/RESPONDENT**

**RULING**

Application for revocation dated 11<sup>th</sup> March 2019 is up for determination. The application was supported by the affidavit of Grace Catherine Ntinyori sworn on 11<sup>th</sup> March 2019 in which she averred that the petitioner who is their brother petitioned for Letters of Administration secretly and never sought their consent even during distribution and thus they were disinherited.

In the Replying Affidavit the Respondent admitted that the applicants were his sisters but denied that he didn't involve them in the cause. He said that he listed applicants as survivors to the deceased that the fact that 3<sup>rd</sup> Objector benefitted was an indication the applicants were aware of the cause.

The Respondent averred that distraction was in accordance with the old constitution and Ameru Customary Law which doesn't allow married daughters to inherit their fathers property. The Respondent also claimed that application was overtaken by events as distribution was completed and there is no asset remaining for distribution for reasons land in question had already been subdivided and sold to 3<sup>rd</sup> parties and that issue of ownership should be determined by the Environment and Land Court.

The Respondent filed notice of Preliminary Objection as to jurisdiction which was however over-ruled. The court gave directions that application for revocation be canvassed by way of written submissions.

The applicants counsel submitted that the applicants grounds for revocation fall within those set out in section 76 of the law of succession Act because respondent didn't seek their consent when filing petition or even when distributing estate.

It was also submitted that the records show that a part from Respondent they were only 2 other beneficiaries present when confirmation was done. It would appear that the Respondents counsel didn't file submissions in respect to application for revocation.

The issue for this courts determination is whether applicants have satisfied the court in seeking that grant made to the Respondent be revoked.

The Respondent in Replying Affidavit didn't produce consent given to him by the beneficiaries including the applicants herein authorising him to petition for Letters of Administration. He simply says casually that the mere fact that one of the daughters was in court and was provided for during confirmation shows that the applicants were aware of the cause. He also said that Meru Customary Law and the old Constitution didn't allow married daughters to inherit and that is why he didn't provide for his sisters.

Both the old Constitution provided that the law was to apply equally to all irrespective of gender and it is a misapprehension by the Respondent that the old construction of the Ameru Customary Law didn't allow girls to inherit.

For the reason that there is no evidence that Respondent sought consent from the applicants to petition for Letters of Administration; For the reason that Respondent didn't seek consent from Applicants to distribute estate and in consideration that Respondent didn't provide for the applicants when they didn't file form denouncing their rights to inherit from their fathers estate, this court finds that the grant was obtained fraudulently. The grant made to Respondent is hereby revoked and all consequential transactions arising from the void grant is hereby annulled.

The assets previously registered in the name of the deceased to return forthwith. The Respondent to pay costs of the application for revocation.

**HON A. ONG'INJO**

**JUDGE**

**RULING DELIVERED, DATED AND SIGNED IN COURT ON 17<sup>TH</sup> DAY OF OCTOBER 2019.**

**In the presence of :**

C/A: Kinoti

Mr Muriira Advocate for Nelima Advocate for Objector.

Ms Okatch partners and no Advocates for Petitioners

**Court:**

Copies of Ruling to be supplied upon payment of copying charges.

**HON A. ONG'INJO**

**JUDGE**