



REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
SUCCESSION CAUSE NO. 143 OF 2008
IN THE MATTER OF THE ESTATE OF
ELI ENOKA AIDA (DECEASED)
AND IN THE MATTER OF APPLICATION

BETWEEN

SHARON ATIENO AIDAH 1ST APPLICANT
MOUREEN ACHIENG AIDAH 2ND APPLICANT
BRENDAH ADHIAMBO AIDAH 3RD APPLICANT
OSCAR ENOKA AIDAH 4TH APPLICANT
STAYCE AIDAH 5TH APPLICANT

AND

BOAZ OSIR AIDAH
CALEB MIYUMO AIDAH
MESHACK OTIENO AIDAH
APOLO OGUTU AIDAH
SUNDAY AYUB AIDAHRESPONDENTS/ADMINISTRATORS

RULING

1. The subject of this estate is Eli Enoka Aida, late of Kotetni, Central Kisumu Location, Kisumu County. He died on 16th December 2007. His sons; Boaz Osir Aida, Caleb Miyumo Aida, Meshack Otieno Aida, Apolo Ogutu Aida and Sunday Ayub Aida applied to this court for grant of letters of administration. The application was preceded by a letter dated 2nd April 2008 from the Chief, Central Kisumu Location in which he named the five sons as the heirs of the deceased. The grant of letters of administration was issued on 18th June 2019 and confirmed and confirmed on 10th March 2009. All the properties of the deceased were inherited by the sons.

2. The applicants, Sharon Atieno Aidah, Moureen Achieng Aidah, Brendah Adhiambo Aidah, Oscar Enoka Aidah and Stayce Aidah, moved the court to revoke the grant issued on ground of material non-disclosure. They contended that they are the children of Samuel Aida, a son of the deceased who predeceased him. They stated that they were not named in the petition nor was their status disclosed when the petitioners petitioned this court for grant of letters of administration. In light of this clear evidence, I called upon the respondents to show cause why the grant should not be revoked.

3. I heard Meshack Aidah, one of the deceased's sons and the respondent, under oath and he confirmed that the deceased had the following children; Boaz Osir Aida, Joyce Otieno, Samuel Imito, Caleb Aidah, Meshack Aidah, Lusaka Aidah, Apollo Aidah and Sunday Aidah. He confirmed that Samwel Aidah was a son to the deceased and that he was not disclosed in the form P & A 5 nor provision made for him or his children as their advocate at the time advised that the petition should only include surviving heirs of the deceased.

4. Under **section 76** of the *Law of Succession Act (Chapter 160 of the Laws of Kenya)*, the court may at any time on its own motion or on application of a party revoke a grant for concealment of material facts or non-disclosure of material facts. When it became apparent that the children of the late Samwel Aidah were not disclosed in the petition, I directed the respondents to show cause why I should not revoke the grant for material non-disclosure.

5. The fact that a direct heir of the deceased was neither named nor disclosed is not denied. Neither is the fact that the applicants are children of the deceased's son. The reason given by the administer for failing to disclose is not sufficient in law. The duty of disclosure is paramount in succession proceedings. Under **section 51** of the *Law of Succession Act (Chapter 160 of the Laws of Kenya)*, an applicant for letters of administration is required to include information as to, “(g) *the names and addresses of all surviving spouses, children, parents, brothers and sisters of the deceased, and of the children of any child of his or hers then deceased.*” [Emphasis mine]

6. I would add that while grandchildren of the deceased are not direct heirs, when their parents die they become direct heirs by virtue of the principle of representation which is applicable (see *Christine Wangari Gachigi v Elizabeth Wanjira Evans and 11 Others NKU CA Civil Appeal No. 221 of 2007 [2014]eKLR*). There is no reason why direct heirs should be disinherited in an intestate succession. They ought to have been named in the petition and their consent sought. This was admittedly not done.

7. For the reasons I have set out above, I therefore revoke the grant issued and confirmed in these proceedings.

DATED and DELIVERED at KISUMU this 6th day of February 2018.

D. S. MAJANJA

JUDGE

Mr Odeny instructed by Bruce Odeny and Company Advocates for the applicants

Mr Otieno instructed Otieno Ragot and Company Advocates for the administrators/respondents.