



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KISII**

**SUCCESSION CAUSE NO. 404 OF 2008**

**IN THE MATTER OF THE ESTATE OF PETE AUMA...DECEASED**

**BETWEEN**

**ERASTUS OUMA PETE**

**DAMARIS ADHIAMBO PETE.....APPLICANTS/OBJECTORS**

**VERSUS**

**LEONIDA TERESA PETE.....RESPONDENT/PETITIONER**

**RULING**

**Background**

1. EZEKIEL PETE AUMA (hereinafter “the deceased”), died intestate on 16<sup>th</sup> October 1992. The deceased was prior to his death, the registered owner of LR. NO. KASIPUL/KACHIENG/451 (hereinafter “**the suit land**”).

2. According to the petitioner, the deceased was survived by the following heirs:

**a) Leonida Teresa Pete –Daughter in-law the petitioner herein.**

**b) Erastus Ouma Pete- son**

**c) Risper Akinyi ojiyo – daughter**

3. Grant of letters of administration intestate was made to the petitioner herein on 7<sup>th</sup> July 2009 which grant was confirmed on 8<sup>th</sup> April 2011 when the suit land, measuring 12 acres was distributed equally between the 3 above-mentioned heirs with each beneficiary getting 4 acres.

**Application**

4. This ruling relates to the application filed by the objectors herein Erastus Ouma Pete and Damar Adhiambo Pete on 4<sup>th</sup> February 2015 under Section 76 of the Law of Succession At and Rule 44 (1) of the Probate and Administration Rules. In the said application the objectors seek orders that the grant of letters of administration made to the petitioner be revoked or annulled on the grounds that it was obtained fraudulently by the making of a false statement and by concealment of material facts. The objectors’/applicants’ case was premised on the ground *inter alia* that the family of the deceased were not involved in the filing of the petition for grant and that the petitioner omitted the names of other beneficiaries, namely; Damar Adhiambo Pete and Sarah Akoth Pete.

5. The objectors accused the petitioner of colluding with the area chief to enable her apply for the grant without involving all the family members of the deceased.

6. The application is supported by the affidavit of the 1<sup>st</sup> Objector who avers that he was the one entitled to apply for the grant of letters of administration of the estate of the deceased as shown in the chief letter attached to the affidavit and marked “EOT2”, but that the petitioner by passed him and applied for the grant without his consent. He further states that the petitioner had embarked on hurriedly sub-dividing the suit land to herself and 2 other beneficiaries thereby leaving out 2 other beneficiaries who are entitled to inherit the suit land.

7. When the application came up for hearing, parties agreed to canvass it by way of written submissions which they subsequently filed and which I have perused.

### **Analysis and Determination**

8. I have carefully considered the summons for Revocation of Grant, the supporting affidavit, the replying affidavit and the written submissions.

9. The main issue for determination is whether the grant of Letters of Administration made to the Respondent/petitioner herein should be revoked.

10. **Section 76 of the Laws of Succession Act** stipulates as follows:

**“A grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by any interested party or of its own motion—**

**(a) that the proceedings to obtain the grant were defective in substance;**

**(b) that the grant was obtained fraudulently by the making of a false statement or by the concealment from the court of something material to the case;**

**(c) that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently;**

**(d) that the person to whom the grant was made has failed, after due notice and without reasonable cause either—**

**(i) to apply for confirmation of the grant within one year from the date thereof, or such longer period as the court order or allow;**

**or**

**(ii) to proceed diligently with the administration of the estate; or**

**(iii) to produce to the court, within the time prescribed, any such inventory or account of administration as is required by the provisions of paragraphs (e) and (g) of section 83 or has produced any such inventory or account which is false in any material particular; or**

**(e) that the grant has become useless and inoperative through subsequent circumstances.”**

11. It was not in dispute that the petitioner did not disclose that the deceased had 2 daughters who were also entitled to inherit his estate.

The petitioner argued that the deceased had during his lifetime, subdivided the suit land among his three sons and all that remained was to regularize their ownership of each portion. She maintained that the deceased's two daughters are already married and implied that they were not supposed to inherit the suit land or play any role in the succession cause. She accused the deceased's two daughter of taking advantage of the provisions of the new constitution to lay a claim to their father's estate.

12. On their part, the objectors argued that their consent was not obtained before the succession cause was filed and maintained that daughters, whether married or not are entitled to inherit from the estate of their deceased father.

13. I concur with the objectors' submission that daughter are entitled to inherit the estate of their deceased father whether they are married or not.

14. **Section 29 of the Law of Succession Act** defines a dependant as follows:

**“29. Meaning of dependant**

**For the purposes of this Part, "dependant" means—**

**(a) the wife or wives, or former wife or wives, and the children of the deceased whether or not maintained by the deceased immediately prior to his death;**

**(b) such of the deceased's parents, step-parents, grand-parents, grandchildren, step-children, children whom the deceased had taken into his family as his own, brothers and sisters, and half-brothers and half-sisters, as were being maintained by the deceased immediately prior to his death; and**

**(c) where the deceased was a woman, her husband if he was being maintained by her immediately prior to the date of her**

death.”

15. From the above provision and numerous case law, it is clear that the law does not distinguish or discriminate between sons and daughters in succession matters. In the case of **Eliseus Mbura M’thara vs Harriet Ciambaka and Another and Another [2012] eKLR**, Lestit J. stated that:

**“The Law of Succession Act does not discriminate between gender in matters of succession or inheritance. Under the Law of Succession Act and indeed under the Constitution a child is a child and every person has equal rights under the Law irrespective of gender. The Law of Succession Act does not discriminate between married or unmarried daughters but gives them equal rights to inheritance as the other children (sons) of a deceased person.”**

16. Kimari J. succinctly and aptly captured the spirit of Section 29 of the Act and Article 27 of the Constitution in the case of **Peter Karumbi Keingati & 4 Others vs Dr. Anne Nyokabi [2014] eKLR** in the following words:

**“This Court is of the view that the time has come for the ghost of retrogressive customary practices that discriminates against women, which have a tendency of once in a while rearing its ugly head to be forever buried.....**

**(In Charles Njau Nyaga vs Agnes Wambui [2015] eKLR.)**

17. In the case of **Rono vs Rono [2008] 1 KLR (G&F) 803**, the court held that the estate of the deceased, who died after the Law of Succession Act had come into force, was to be distributed under the Act which did not discriminate between sons and daughters. In the said case, the court rejected the argument that customary law was applicable.

18. In the instant case, the petitioner did not deny that the deceased was survived by 2 daughters but they alluded to the fact that the daughters were excluded from the succession case on the basis that they were already married.

19. As can be seen from the above cited cases and without belaboring the point further, it is clear that daughters’ right to inherit their father’s estate cannot be taken away from them under the guise of customary law dictates. In any event, customary law cannot supercede the clear provisions of the Constitution and written law.

20. Indeed, **Article 2 (4) of the Constitution** stipulates that **“Any law including Customary Law, that is inconsistent with this Constitution is void to the extent of the inconsistency, and any act or omission in contravention of this Constitution is invalid”** (emphasis added).

21. In the case of re- estate of **Kirika Marara (Deceased) [2009] eKLR**, Anyara Emukule J. observed:

**“Daughters and sons, unless one denounces his/her inheritance, are equally entitled to inherit their parents’ estate. It is immaterial that daughters are married.”**

22. Having regard to the above cited cases and observations, I find that the objectors application seeking *inter alia*, the revocation of the grant issued to the petitioners herein is merited and it is hereby allowed in the following terms:

a) **The grant of letters of administration issued to the petitioner herein on 9<sup>th</sup> April 2011 confirmed on 8<sup>th</sup> April 2011 is hereby revoked.**

b) **A fresh grant shall be issued in the joint names of the petitioner and the 1<sup>st</sup> objector.**

c) **The suit property, being LR. NO. KASIPUL KACHIENG/451 shall revert back to the name of the deceased to await fresh distribution/confirmation of grant by this court.**

d) **Each party is at liberty to file a fresh application for confirmation of grant, which application must factor in the interests of all he beneficiaries (deceased’s children) unless they expressly renounce their interests to the said estate.**

e) **Each party shall bear his/her own costs of the application.**

**Dated, signed and delivered in open court this 7<sup>th</sup> day of March, 2018**

**HON. W. A OKWANY**

**JUDGE**

**In the presence of:**

- N/A for the Petitioner

- N/A for the Objector
- Omwoyo: Court Clerk