



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MERU**

**SUCCESSION CAUSE NO. 321 OF 1996**

**IN THE MATTER OF THE ESTATE OF M'IKIARA KIMIRI**

**JULIUS MURIUNGI.....1<sup>ST</sup> PETITIONER**

**DAVID MBIJIWE.....2<sup>ND</sup> PETITIONER**

**FANUEL RIUNGU.....3<sup>RD</sup> PETITIONER**

**VS**

**JOYCE KINANU M'IKIARA.....1<sup>ST</sup> INTERESTED PARTY**

**MARY NTIBUKA MWONGERA.....2<sup>ND</sup> INTERESTED PARTY**

**RULING**

Application dated 2<sup>nd</sup> November 2016 was brought under Section 76(a)(b)(c) and (e) of the Law of Succession Act and Rule 44 and 73 Probate and Administration Rules, S.68 Land Registration Act 2012 seeking that grant made and confirmed to David Mbijiwe be revoked and/or annulled and a fresh grant be issued to the applicants Joyce Kananu M'Ikiara, Mary Ntibuka Mwongera and Julius Muriungi for reasons the grant was obtained by concealment of material facts to the court. It was also applied that an order of inhibition be placed on land parcels listed at prayer 2 and 3 of the application until the application is heard interparties and determined.

Justice Gikonyo listened to ex parte application and granted orders of inhibition to be lodged as per prayer 2 & 3. The application was supported by grounds on the face of the application to the effect the petitioners who are sons of the deceased misled the court by concealing material facts to this cause to the court;

That the petitioners misled the court that 2 widows of the deceased were daughters of the deceased;

That no consent of the interested parties, the widows or other daughters of the deceased were obtained during filing and at the distribution.

That the petitioners never shared any estate of the deceased to the surviving widows or daughters of the deceased but shared the whole estate amongst themselves at the exclusion of other dependants of the deceased.

That the cause was lodged secretly and without knowledge of the 3 widows and all the daughters of the deceased.

Joyce Kinanu and Mary Ntibuka also swore supporting affidavit to the application for revocation identifying the 3 widows and 6 daughters of deceased who were disinherited by the petitioners, and that although the deceased left a vast estate his widows are surviving on pittance. Mostly from well wishers and that they had been evicted from lands where they eked a living during the lifetime of the deceased.

It was averred that since David Mbijiwe and Fanuel Riungu are deceased the grant confirmed to them was unoperative after their demise and should be issued to applicants and Julius Muriungi to ensure the interests of all dependants are catered for.

In reply Mary Kaburu Riungu said she was widow to Fanuel Riungu as per Succession Cause No. 211 of 2002 and therefore a beneficiary in the estate herein. She was not opposed to revocation of grant but opposed the proposed administrators and suggested that instead of Julius. She should be joint administrator with the applicants whom she said will represent the interests of all the beneficiaries.

Julius Muriungi son to the deceased also swore affidavit and said he was instrumental in the administration of the estate and only one property L. 8285/597 Nairobi is awaiting transmission and the rest had been transmitted to the beneficiaries. He said the step sister 1<sup>st</sup>

Applicant and his sister 2<sup>nd</sup> applicant were aware of the filing processing and conclusion of the cause. He said the widow have always been provided for and have never lacked. That the 2 surviving widows are settled on L.R.Abothuguchi/Kithuriene/318.

That he had always provided for the widows and even educated the children of his siblings without any problem;

He said the applicants are up to some mischief as they could not explain why they have come to court after 20 years after their father died and not earlier when they were all along aware of the existence of the cause.

That if widows were indicated as daughters then it was a typographical error not intended. He also averred that Mary Karuru is widow to Fanuel Riungu and she represented her husband in the distribution. He averred the widows were present in court during confirmation and were aware of the cause. He said applicants didn't have support of the widows and other sisters.

He said 1<sup>st</sup> Applicant Joyce Kinanu comes for money every month. He said no one has interfered with the estate and he should be given letters of Administration to finalise the transmission and sale of the remaining asset to cater further for surviving widows of the deceased.

Elizabeth Karoki M'Mbijiwe also swore a replying affidavit in which she accused Julius Muriungi of intermeddling with the estate to the exclusion of other beneficiaries whom he was only giving handouts instead of their rightful shares. She sought that the estate be redistributed.

The application was canvassed by way of written submissions and Grance Ngautami Kamundi's affidavit also filed together with the submissions by Julius Muriungi. The deceased in this cause died on 18.7.1993 and the Chief of Kithurine Location wrote a letter dated 13.8.1996 identifying the 3 widows of the deceased, 3 sons and 6 daughters who were indicated as all married.

David Mbijiwe, Fanuel Riungu and Julius Muriungi petitioned for Letters of Administration as per application filed on 9<sup>th</sup> December 1996 – P& A 80.

Although the chief's letter gave a full list of beneficiaries P & A 5 lists the 3 sons – petitioners, one wife and 2 daughters.

The properties making up the estate are listed as:-

- a. Ngobit Supuko Block 5/6 (South Imenti)
- b. Ntima/ Igoki/450
- c. Abothuguchi/Kithirune/318
- d. Abothuguchi/Kithurune/159
- e. Abothuguchi/Kithirune/1255
- f. Abothuguchi/Kithirune/917
- g. Abothuguchi/kithirune/1349
- h. Plot No. 18 kithirune
- i. Vehice KZN 403
- j. L.R. 8285/597

The total value of the estate was not given.

Grant of Letters of Administration Intestate was made to applicant on 20<sup>th</sup> May 1997 by the Deputy Registrar and on 21.9.1998 the applicant to application for confirmation was in court and the grant was confirmed by Justice Etyang as he then was.

In the affidavit supporting application for confirmation the names of all beneficiaries 3 wives, 3 sons and 6 daughters to the deceased are listed but distribution is made only to 3 sons.

An additional property No. O.R.171/426 Meru Municipality is added to the list of what is distributed to the 3 sons of the deceased at the exclusion of the daughters and wives. There are also 2 additional vehicles KAG 667 and KZN 403. In affidavit sworn by David Mbijiwe on 15<sup>th</sup> April 2015, there is a list of totally different properties required to be included in list of assets after confirmation and distribution.

Another certificate of confirmation dated 23<sup>rd</sup> April 2015 was issued and again it shows all the properties in the estate are distributed to the sons and/or families of the sons of the deceased and excluded the daughters and the widows.

Issues for consideration are whether the application to revoke grant now held only by Julius Muriungi, his 2 Co-Administrators/brothers having died is merited. Whether the applicants and other beneficiaries to the estate gave authority to the petitioners to petition for Letters of Administration, confirmation of grant and distribution of the estate.

From the pleadings filed herein I have not seen any consent obtained by the initial petitioners to petition for Letters of Administration from the many beneficiaries and/or dependants of the deceased. There is also no consent to confirmation and distribution of the estate from the beneficiaries of the estate. The petitioners did not comply with Rule 7(7) (a) (b)(c) of the Probate and Administration Rules. None of the other beneficiaries daughters and the surviving wives of the deceased renounced their rights to take up Letters of Administration neither did they give the initial petitioners consent to petition for Letters of Administration. Having failed to get consent even for distribution of the estate they worsened the situation by excluding the daughters and wives from shares in the estate. Julius Muriungi has not shown why and who gave him the authority to give handouts to the widows and daughters of the deceased. He has not even accounted for what exactly he meant by giving handouts. He didn't account for which of his sibling's children he is educating using the proceeds from the deceased person's estate and he cannot be heard to claim he is responsible to beneficiaries to his father's estate.

The petitioner Julius Muriungi stands in same position as his brothers and sisters in reference to the estate and his position is inferior to that of the widows to the deceased.

The petitioner also were not candid as to the properties forming the estate of the deceased. They kept on unleashing them one by one and distributing to themselves to the detriment of the other beneficiaries. The remaining Administrator gave himself 2 motor vehicles and registered another one in the name of a company whose directorship is not known and without explaining how the company came to be interested in the estate of the deceased. It is not sufficient to say that the applicants and other beneficiaries have taken long to complain. It is the responsibility of the petitioner/Administrator to prove that he complied with the mandatory provisions of Rule 7(7) of the probate and Administration Rules.

As indicated earlier the petitioners filed petition with a letter from chief listing the names of all the beneficiaries but in their petition selectively indicated the names of a few beneficiaries and left most of them daughters and widows out.

They went ahead to distribute the deceased persons vast estate to themselves excluding the daughters and widows of the deceased. This amounts to concealment of material facts necessary to determine the cause in a justifiable manner. They concealed the particulars of other properties and only unleashed when convenient and distributed to themselves. The current Administrator should give account of all the deceased people's property and proceeds therefrom.

This court finds that the initial petitioners/Administrators acted contrary to provisions of S.29 and 76 of the law of succession Act as well as Rule 7(7) (a)(b)and (c) of Probate and Administration Rules and the grant made and confirmed to them cannot be sustained. The same is revoked; To expedite this matter this court now appoints the applicants and Julius Muriungi as well as Mary Karuru Riungu as joint Administrators to the estate of the deceased herein. To expedite the determination of this cause the joint administrators are hereby ordered to make a full inventory of the properties forming the estate and file in court together with a fresh application for confirmation and modes of distributions within 21 days from today's date.

The grant made to the initial petitioners is hereby revoked and any transactions arising therefrom is nullified forthwith. The properties to revert to the name of the deceased pending proper redistribution of the estate.

**HON. A.ONG'INJO**

**JUDGE**

**RULING SIGNED, DELIVERED AND DATED THIS 10<sup>TH</sup> DAY OF MAY 2018.**

**HON. A.ONG'INJO**

**JUDGE**

**In the presence of:**

C/A:

Petitioner: - Mr Gikunda Advocate for Petitioner

Interested Parties:-Mr Gichunge Advocate

**HON. A.ONG'INJO**

**JUDGE**

**Mr Gichunge**

We pray to be supplied with a copy of the ruling.

**Order**

Certified copies of ruling to be supplied to counsels at parties costs.

**HON. A.ONG'INJO**

**JUDGE**