



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

MISC.SUCCESSION CAUSE NO. 25 OF 2017

IN THE MATTER OF THE ESTATE OF THE M'IMUNYA M'MWIRIA – DECEASED

CIOMUTHURI M'IMUNYA.....APPLICANT

VS

JAMES TURIBU M'IMUNYARESPONDENT

RULING

By an application dated 31st day of August 2017 the applicant herein Ciomuthuri M'Imunya sought that the grant of Letters of Administration of the estate of M'Imunya M'Mwiria(deceased) made to the Respondent on 16th January 2014 and confirmed on 27th January 2015 in Isiolo CMC Succession Cause No 1 of 2013 be revoked on the ground that the same was obtained fraudulently and by concealment of material fact vital to the determination of the cause and that costs of these proceedings be met by the Respondent.

The application is based on the ground:-

- a. That the grant has been obtained by fraudulent means and without consent of all the beneficiaries.
- b. That the distribution of the deceased estate was done inequitably and some members of the family have been omitted from the inheritance.
- c. That the Respondent proceeded with the distribution of the deceased estate secretly and in the process disinherited some of the beneficiaries. The application is also supported by the affidavit sworn by the applicant on 31st August 2017.

The applicant averred in her affidavit that she is the widow to the deceased and that the Respondent had a brother who died and left a family that is entitled to inherit from the deceased estate namely Romano Kabarau M'Imunya who were omitted from the cause in Isiolo CMC cause No. 1 of 2013. Applicant alleged that what was due to the late Romano Kabarau was given to the son to the Respondent Titus Muchui Turibu.

It was also averred that the Respondent took for himself the plot at Garbatulla instead of holding in trust for the children of the deceased brother Titus Muchui Turibu. She urged that the grant be revoked and undertaken a fresh for proper administration by the deceased's estate.

In reply to the application James Turibu M'Imunya said that family members agreed on distribution and the applicant participated and was the custodian of all the Estate documents. He said the deceased Romano Kabarau was deceased at the time the petition was filed but is son Thurania Kabarau benefitted from Kambi ya Juu, unsurveyed land which was not included in the list of assets as it didn't have plot number.

That the said Thurania was to benefit as per annexure JT1. Annexure JT2 (a) Letter dated 25.1.2012 by Turibu M'Imunya M'Mwiria to Nyambene County Council. JT2 (b) Letter dated 10.2.2012 from Nyambene County Council to M'Imunya M'Mwiria.

At paragraph 10 the Respondent avers that the Garbatulla plot had a long standing dispute which family members agreed that as the eldest son, he should inherit and also as to continue defending the cause.

He said that that is the only property he is inheriting and he should be the one complaining. The Respondent doubted the applicants' mental capacity. The application was canvassed by way of written submissions. The applicant filed submissions whereas the Respondent filed further affidavit. The deceased died on 2nd October 1991 according to certificate of Death issued on 12th May 2004. The office of Assistance Chief Matiru Sub location wrote a letter dated 1st October 2012 confirming that the family of the deceased herein met on 19th August 2012 and agreed to share their grandfather's plots through the surviving grandmother the applicant herein in the manner he lists in his letter. The assets listed in the letter as well as in P&As are:-

- a. Plot No. 66 – Isiolo
- b. Plot No. 1372 – Isiolo
- c. Plot No.12 – Kianjai
- d. Plot No. 3 Garbatulla.

The Chiefs letter does not identify who the beneficiaries are except for giving the name of the widow Ciomuthuri M'Imunya. Although the Assistant Chief's letter indicates that the deceased person's family members met on 19th August 2012 and discussed and agreed on how to distribute the estate, he didn't give names of the family members who met.

Although the Chief's letter says that distribution was to be done through the deceased person's widow the Respondent went against that agreement and petitioned for letters Administration without seeking consent of the applicant or even other beneficiaries.

On 23rd September 2014 application for confirmation was deferred to enable Respondents to remove names of beneficiaries who had died from the list of beneficiaries having done that the grant was confirmed on 27th January 2015 as follows:-

1. (a) John Kanyuthia M'Imunya was to get ½ share from plot No. 66 – Isiolo
(b) and Martha Nkatha was to hold for Stanley Mutembei Muriuki ½ share from plot no. 66 Isiolo.
2. (a) Josiah Gitile Imunya and (b) Stella Kathure to hold in trust for Stephen Mutethia Muringi to share plot no. 1372 Isiolo equally.
3. Titus Muchui Turibu and Sammy Remera Tite to share plot no. 12 Kianjai equally.
4. James Turibu M'Imunya to get plot No.3 Garbatulla – ½ share.

There is no consent by applicant to application for confirmation and there is no consent to mode of

Distribution. None of the other beneficiaries have given their consent and it is not shown in the courts proceedings they were present at the hearing of the application for confirmation. To make matters worse there is no distribution made to the applicant who stands in priority as an administrator to the estate of her late husband. In the circumstances I do find that the application is merited. The grant made to the Respondent James Turibu on 16th January 2014 and confirmed on 3rd February 2015 is hereby revoked and any transaction arising out of the grant made to James Turibu M'Imunya are nullified. The grant will be made in the joint names of the applicant and Respondent forthwith. The Assistant Chief of Matiru sub-location to write another letter specifying the names of the deceased persons children/ beneficiaries and dependants whether dead or alive; sons and daughters if not alive the names of their children/Husbands/wives should also be specified.

The beneficiaries to be informed to attend court during mention of the matter for directions.

HON. A.ONG'INJO

JUDGE

RULING SIGNED, DELIVERED AND DATED THIS 3RD DAY OF MAY 2018.

HON. A.ONG'INJO

JUDGE

In the presence of:

C/A: Penina

Petitioner:- Mr Kitheka Advocate for Applicant

Respondent:- Present in person

Mr Kitheka

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

Order

Copy of ruling to be supplied at applicants costs.

Mention. 25.7.2018

HON. A.ONG'INJO

JUDGE