



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MERU**

**SUCCESSION CAUSE NO. 37 OF 2011**

**IN THE MATTER OF THE ESTATE OF THE M'NAIROBI**

**M'MUGA ALIAS NYAIROBI MWOGA -DECEASED**

**ALEXUIS MURUNGI.....PETITIONER**

**AND**

**SUSAN MUGITO & 3 OTHERS.....APPLICANT/INTERESTED PARTY**

**JUDGEMENT**

By chamber summons dated 5<sup>th</sup> day of October 2017 the 4 applicants/interested parties/Daughters of the deceased sought that the court issues an order of inhibitions restraining registration of dealings relating to L.R. Nos. Nkuene/Ngonyi/587 and 568 pending the hearing of the application to revoke grant made to Alexis Murungi.

The application is based on the grounds that Alexis Murungi the petitioner filed the cause herein without the consent of the interested parties.

That the proceedings to obtain grant were defective;

That the grant was obtained irregularly by the concealment of material facts to the cause from court;

That the grant was obtained by means of untrue/allegations of facts essential in law;

That the petitioners and other beneficiaries may alienate the subject parcels of land thereby prejudicing the interested parties.

The application is also supported by the affidavit sworn by Susan Mugito on 5<sup>th</sup> October 2017 averring that she and the other interested parties are daughters of the deceased and sisters to the petitioner. She averred that neither of the deceased daughters signed any document related to the succession cause herein in P&As are names written by hand of anyone and that some of the interested parties are used to thumb-printing as opposed to appending signatures.

That as a result of the secrecy by the petitioner the interested parties were disinherited from the estate of the deceased.

She further averred that the deceased had allocated the interested parties a specific share of his estate which the petitioner did not allocate to them during distribution. That the contribution of Kenya 2010 treats sons and daughters equally and that the application should be allowed to accord fairness to the beneficiaries of the deceased.

In reply the petitioner in an affidavit sworn on 20<sup>th</sup> November 2017 confirming the interested parties as daughters to the deceased. He averred that the deceased during his life time call all his children for discussion on the mode of distribution of his estate and a consensus was reached that it be subdivided amongst his 2 wives children.

That he instituted the petition after seeking consent of the interested parties who gave their ID cards except that they refused to sign the consent.

That the interested parties were all seized with prior information when the chief was writing the letter to commence/institute the cause;

That there was no secrecy by the petitioner and none of the interested parties were disinherited from the estate since it was agreed that daughters would get their shares from their brothers namely Alexuis Murungi, Zakayo Mpathia and Zaverio Mwobobia 1.34, 1.33 and 1.33 acres respectively. He further averred that the sisters are married and living happily in their husbands homes and there is no cause for worry if they get the deceased property through their brothers. Directions were taken that application for revocation should be canvassed by way of written submissions.

The interested parties submission was that they did not consent to the filing of the succession cause and as a result they were disinherited from their fathers estate. They didn't also sign consent for confirmation of grant and distribution this was contrary to Rule 26(1) of the Probate and Administration Rules which provide that

**“Letters of Administration shall not be granted to any applicant without notice to every other person entitled in the same degree as or in priority to that applicants”**

It was submitted that since the interested parties were not notified the grant was defective and obtained fraudulently. They were condemned unheard by being disinherited. It was submitted that the interested parties are daughters to the deceased and therefore proper beneficiaries and argument that they will benefit from their brothers is misplaced as they are adults and their shares should be registered in their names. It was urged that the application dated 5<sup>th</sup> October 2017 be allowed as it was meritorious.

The Respondents submissions were that the application is a non-starter and should be dismissed with costs. The rest of the submissions don't seem to relate to the application for revocation and the court will disregard the same.

I have considered the application and it comes out clearly that the petitioner herein did not obtain consent of the applicants in filing the cause. He admits having obtained their ID cards and confirming they didn't sign consent. Further when applying for confirmation of grant he didn't seek or obtain their consent to confirmation or distribution of the estate. The estate was distributed among the sons of the deceased only without the daughters denouncing their interests in the estate expressly.

I do find that the grant was obtained fraudulently and it was defective in substance having disregarded the rights of some of the beneficiaries to the estate.

In the circumstances this court hereby revokes the grant made to Alexuis Murungi and all subsequent transactions arising there from are nullified. To avoid the long process of filing fresh petition this court hereby makes an order to the effect that Alexuis Murungi and Susana Mugito shall be joint Administrators to the estate of the deceased herein. The 2 Administrators to file joint and/or separate modes of distribution with application for confirmation with or without consent of all the other beneficiaries for the final determination by the court of the cause. No orders as to costs.

**HON. A.ONG'INJO**

**JUDGE**

**RULING SIGNED, DELIVERED AND DATED THIS 3<sup>RD</sup> DAY OF MAY 2018.**

**HON. A.ONG'INJO**

**JUDGE**

**In the presence of:**

C/A :Penina

Petitioner:- Present in person

Interested Parties:-Mr Kithinji Advocate holding brief for Murithi for Interested party.

**Mr Kithinji**

We can have a mention date.

**Order**

Joint Administrators to file application for confirmation within 30 days.

Mention 16.7.2018

**HON. A.ONG'INJO**

**JUDGE**