



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MACHAKOS**

**SUCCESSION NO. 231 OF 2008**

**IN THE MATTER OF THE ESTATE OF BENJAMIN WAMBUA KALOVOTO (DECEASED)**

**FREDRICK NZIOKA MUTUA**

**JACQUELINE KOKI WAMBUA.....APPLICANTS**

**VERSUS**

**AMBROSE MUSYOKA WAMBUA**

**CAROLINE NDUNGE WAMBUA**

**TABITHA KAMENE WAMBUA.....RESPONDENTS/ADMINISTRATORS**

**RULING**

1. Two Applications were filed herein. The first one is dated 12/1/2016 by the Petitioners while the second one is by two beneficiaries and is dated 25/5/2016.
2. The Petitioner's Application dated 12/1/2016 seeks that the grant issued to the four administrators herein be rectified and a fresh one be issued as two of the Administrators namely **Catherine Mutindi Wambua and Tabitha Kamene Wambua** have since died so that the two remaining Administrators do proceed to administer the estate.
3. The second Application dated 25/5/2016 is filed by two Applicants namely Fredrick Nzioki Mutua and Jackline Koki Wambua who have claimed to be beneficiaries of the deceased by virtue of being children of the deceased's daughter one Eisoah Lois Mutua who has since passed on and the basis of their Application is that the Letters of Administration granted to the Administrators had been obtained fraudulently and in concealment of material facts in that not all properties of the deceased were listed and further that some beneficiaries had been deliberately omitted and are thus seeking that the said grant be revoked and this court give direction towards the Administration of the estate afresh.
4. Both Applications were vehemently opposed. Rival affidavits were filed by the Petitioners as well as one beneficiary and two grandchildren of the deceased thereby suggesting that the dispute generated from the two Applications is between the Administrators on the one hand and beneficiaries on the other hand as well as a beneficiary turned objector.

**The Administrators case**

The Administrators vide their Application dated 12/1/2016 are seeking for the rectification of grant as two of the Administrators namely Catherine Mutinda Wambua and Tabitha Kamene Wambua have since died and that the two remaining administrators Ambrose Musyoka Wambua and Caroline Ndunge Wambua to proceed to administer the estate of the deceased. It is the Administrators case that the remaining two administrators are sufficient and capable of administering the estate. The administrators are opposed to one of the beneficiaries namely Wilson Morris Wambua who incidentally is an Objector in these proceedings to join as an administrator as he is a trouble maker and untrustworthy since he is the source of acrimony within the family where he had placed a caution on some property and could only be removed upon being made an administrator in the estate and which goes against the acceptable characteristics of an administrator. The Administrators feel that the said Objector is a lone ranger out to cause confusion and delay the administration of the estate and therefore the remaining two administrators are sufficient as they have the blessings and trust of the rest of the beneficiaries.

As regards the Application dated 25/5/2016 filed by two grandchildren of the deceased, it is the view of the Administrators that the grandchildren of the deceased do not have locus standi to seek for revocation of letters of administration and therefore the application does

not meet the threshold for revocation purposes. It was also the contention of the Administrators that the issue of administration of the estate and rightful beneficiaries to the estate had already been determined in the ruling dated 15/6/2012 by Makhandia J (as he then was) and therefore the present Application is an abuse of the court process and meant to delay the finalization of this matter.

### **Grandchildren/Applicants case**

The grandchildren of the deceased vide their Application dated 23/05/2016 have sought for revocation of the grant on the grounds inter alia that they had not been consulted during the filing of this cause and further that some assets of the deceased had been omitted. It is their case that the administrators have acted with ulterior motives to exclude the grandchildren of the deceased whose mothers had already passed on and therefore the Administrators should be removed and replaced with other beneficiaries who have the interest of all at heart.

### **Objector's Case**

The Objector herein Wilson Morris Wambua is technically not opposed to the Administrators Application dated 12/1/2016 save that he should be made an Administrator as he has been kept away by the other Administrators who have failed to execute their mandate pursuant to the ruling dated 15/6/2012.

As regards the Application dated 25/5/2016 filed by some grandchildren of the deceased, it is the objector's case that the same should be dismissed since the issue of distribution was fully determined by Hon. Justice Makhandia (as he then was) vide the Ruling dated 15/6/2012.

Finally it is the Objector's case that the Application by the grandchildren of the deceased is without merit as they do not have priority over the Administrators and objector who are children of the deceased and as such their interests shall be taken care of through their parents.

5. Learned counsels for the Petitioners, beneficiaries/applicants and beneficiary/objector filed written submissions on the two applications dated 12/1/2016 and 25/5/2016. I have considered the said submissions as well as the rival affidavits. It is not in dispute that the beneficiary/objector herein Wilson Morris Wambua had earlier filed an application seeking to have the administrators herein restrained from intermeddling and or interfering with the estate and that the Hon. Justice Makhandia (as he then was) heard the matter by way of viva voce evidence and delivered a ruling dated 15/6/2012 in which orders were issued inter alia that the net intestate estate of the deceased shall be equally divided among the surviving widows and grandchildren the share that would otherwise have gone to their respective husbands and or parents as long as they were children of the deceased. It is also not in dispute that to date the estate of the deceased, for one reason or another is yet to be distributed among the beneficiaries. It is also not in dispute that two of the administrators namely Catherine Mutindi Wambua and Tabitha Kamene Wambua have since passed on. The issues I raise for determination are as follows:-

*(i) Whether or not the remaining administrators are sufficient to carry on with the administration of the estate;*

*(ii) Whether the two grandchildren of the deceased in their application dated 25/5/2016 have presented sufficient reasons to warrant the grant to be revoked.*

6. As regards the first issue, it is noted that the grant herein had been issued to four administrators. Now with the demise of the other two administrators, the issue is whether the remaining two shall continue to administer the estate or there is need to add more administrators. The Objector herein Wilson Morris Wambua has suggested that he should be made an administrator. The remaining two administrators have objected to his inclusion as an administrator and they have pointed out to this court that the said Wilson Morris Wambua has been problematic in the past as he has created a lot of animosity and acrimony within the family and further that none of the family members want him to be an administrator. The Petitioners in their affidavit presented evidence to the effect that the said Wilson Morris Wambua had placed a caution in one of the properties of the deceased and could only remove the same upon being made an administrator of the estate. It would appear therefore that the said Wilson Morris Wambua wants to be an administrator by all means yet he must earn the trust of the beneficiaries. Indeed none of the beneficiaries has sworn an affidavit in his support. Under Section 81 of the Law of Succession Act, if one or more of several executors or administrators die, the powers and duties of administration shall vest in the surviving administrators. Two administrators are still alive and they have indicated that they are equal to the task of administration of the estate. They have not requested for an additional administrator as they feel that they shall manage the duties. This court will be reluctant to impose an administrator on the estate when already there are two others who have promised the court that they are adequate in themselves to administer the estate. Again, a perusal of the proceedings and the rival affidavits, reveals that there is no synergy or point of convergence between the remaining administrators and the Objector herein Wilson Morris Wambua. If he is to be allowed to come on board, there is a likelihood of the relationship being polarized with the consequence that this matter is likely to be delayed from being finalized. It is without doubt that this is fairly an old matter which should be concluded without delay so that the rightful beneficiaries can obtain their entitlements under the estate. The prudent thing in the circumstances is to allow the two remaining administrators to carry on with the task of administering the estate. As the other two administrators have passed on, the grant herein should be rectified as requested by the Administrators and afresh one shall issue in the names of the remaining two administrators.

7. As regards the second issue, it is noted that the two Applicants who are grandchildren of the deceased in their application dated 25/5/2016 have sought for revocation of the grant issued to the administrators on the ground that material facts were concealed and that some of the properties of the deceased were not listed and that some beneficiaries were not disclosed. Revocation of grants is provided for under Section 76 of the Law Succession Act whereby a person petitioning for a grant is under an obligation to disclose the names of all persons with beneficial interest and also to disclose all the assets and liabilities of the deceased and that if there is fraudulent concealment of material facts then a grant stands to be annulled or revoked. The Application was strenuously opposed by both the Administrators and the Objector on the ground that the Applicants lack the requisite locus standi and further that the issue of distribution of the estate was fully determined by Hon. Justice Makhandia (as he then was) vide a ruling dated 15/6/2012.

The Applicants have described themselves as children of the late Eisoh Lois Mutua who was a daughter of the deceased herein and therefore they are grandchildren of the deceased herein. The Applicants however have not shown any evidence to the effect that they have obtained letters of grant of administration for the estate of their late mother Eisoh Lois Mutua. Again I find that if they had any beneficial interest in

this estate then they were to claim the same through their mother who was a daughter of the deceased herein. Even though no evidence of a locus standi was tendered by the Applicants. I find that their interests are not lost because the interest of their mother had already been taken care of vide the ruling dated 15/6/2012 by Hon. Justice Makhandia (as he then was) which was as follows:-

***“The net intestate estate of the deceased shall be equally divided among the surviving widows and grandchildren. The share that would otherwise have gone to their respective husbands or parents as long as they were children of the deceased”***

Looking at the above ruling, it is quite clear that the interests of the grandchildren were fully taken care of and all the Applicants needed to do were to claim through their mother or father as the case may be during the distribution stage.

They should wait until that stage when they could present their mother’s interests. That ruling has been in existence and available to all the parties as each one of them has annexed to the rival affidavits and that no one has preferred an appeal against the same to date. In the absence of an appeal, I find that the parties were satisfied with the same. The Applicants could as well file a review application if they felt that certain facts or information had not been availed to the court at the time the ruling was being made. In any event the ruling aforesaid clearly identified the specific persons to benefit from the estate of the deceased. The Applicants fall under the ambit of those persons so specified under the category of grandchildren and as such their present claim that their names were omitted during the application for grant is not believable. They should wait for the distribution of the estate when they can present their claim under their mother’s interest.

Finally it is noted that the alleged properties not listed have not been evidenced by the Applicants by way of official searches. Merely presenting land reference numbers without backing them up with official searches does not establish the claim that such properties belonged to the deceased. The Applicants have not proved the alleged fraud on the part of the Administrators. I find the Applicants have not convinced this court that there is need to revoke the grant. The Applicant’s Application therefore is an abuse of the court process and is only meant to delay the finalization of this cause.

8. In view of the foregoing observations , the following orders are hereby made:-

- (a) The Administrators Application dated 12/1/2016 is allowed as prayed.***
- (b) The Application dated 25/5/2016 filed by Fredrick Nzioki Mutua and Jacqueline Wambua is dismissed.***
- (c) The Administrators herein are directed to fast track the finalization of this matter in line with the ruling dated 15/6/2016.***
- (d) As the matter involves family members, there shall be no order as to costs.***

Orders accordingly.

**Dated and delivered at Machakos this 19<sup>th</sup> day of July, 2018.**

**D. K. KEMEI**

**JUDGE**

**In the presence of:-**

Kinyanjui - for the Applicants

Thiongo - for the Administrators

Josephine - Court Assistant