



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

FAMILY DIVISION

SUCCESSION CAUSE NO 1214 OF 2000

IN THE MATTER OF THE ESTATE OF PAUL BORO NJEHU (DECEASED)

JOSEPHAT MBONI.....1ST APPLICANT/PROTESTOR

JOHN KANGEE NJEHU.....2ND APPLICANT/PROTESTOR

VERSUS

ANTHONY MOSES NJEHU.....1ST PETITIONER/RESPONDENT

JANE WAITHERA BORO.....2ND PETITIONER/RESPONDENT

AND

PETER KIMANI BORO.....1ST INTERESTED PARTY

NJAMBI KARIU.....2ND INTERESTED PARTY

ESTHER WAMAITHA BORO.....3RD INTERESTED PARTY

LUCY WARIARA NJEHU.....4TH INTERESTED PARTY

PAUL BORO NJEHU.....5TH INTERESTED PARTY

BANGO NJENGA NJEHU.....6TH INTERESTED PARTY

SIMON PETER KIMANI.....7TH INTERESTED PARTY

RULING

1. The 1st applicant/protestor Josephat Mboni and the 2nd applicant/protestor John Kangee Njehu are the grandchildren of the deceased Paul Boro Njehu who died intestate on 4th March 1985 leaving an estate whose property was L.R. No. Muguga Jet Scheme/ 292. The 1st respondent Anthony Moses Njehu and 2nd respondent Jane Waithera Boro are the son and widow, respectively, of the deceased. On 20th June 2000 they (the respondents) petitioned this court for the grant of letters of administration intestate. The grant was issued to them on 23rd August 2000, and confirmed on 7th December 2000.

2. According to the certificate of confirmation, the property was shared between the 1st respondent (2.625 acres) and his brother Peter Kimani Boro (1.5 acres) (1st interested party). According to the 1st respondent, the two were to hold the land for the subsequent sharing among all the beneficiaries of the estate. The deceased left three houses.

3. The applicants brought the present summons under **section 76 and 45(1) and (2) and 76 of the Law of Succession Act (Cap 160) and rule 73 of the Probate and Administration Rules** to complain that the proceedings leading to the grant were defective in substance; the grant

was obtained fraudulently by the making of a false statement and by the concealment from the court of important and relevant matters to the case; the grant was obtained by means of untrue allegation of a fact essential in point of law to justify the grant; the respondents and interested parties have failed after due notice to proceed diligently with the administration of the estate; the respondents and interested parties had not filed accounts under **section 83(e)** and **(g)** of the **Act**; and that the respondents and interested parties have used the assets of the estate as security for loans which has exposed those assets.

4. In support of the application the applicants stated that the petitioner has petitioned for the grant, obtained the grant and had it confirmed without their participation, or the participation of the family members, including Joseph Njehu Boro and Damaris Wamaitha Mungai. It is, however, notable that the application was not brought on behalf of those family members, or on behalf of Joseph Njehu Boro and Damaris Wamaitha Mungai. I therefore consider that the applicants' complaint does not affect any other person.

5. The grounds and material which the application was based show that the applicants wanted the grant revoked. They did not specifically make that request, but instead sought to restrain the respondents and interested parties from intermeddling in, alienating, selling, charging, parting with possession or in any other manner interfering with the property of the estate. Under **Article 159(2)(d)** of the Constitution and **rule 73** of the **Probate and Administration Rules**, and considering that the application was brought under **section 76** of the **Act**, I will proceed as if the applicants sought the revocation of the grant.

6. The response by the respondent was that the applicants, being grandsons of the deceased, were not beneficiaries of the deceased who were entitled to notice of participation in the proceeding leading to the grant.

7. There was dispute that the deceased was the grandfather of the applicants. The parents of the applicants are alive, and were the direct beneficiaries of the deceased's estate. Under **section 51(2)(g)** of the **Act**, the applicants were not required to include the applicants in the petition. The parents of the applicants have not complained that their consent was not sought when the petition was filed.

8. That being the case, I find that the applicants have no valid claim to the assets of the deceased. Their complaint that they were not involved in the proceedings leading to the grant is not merited. Consequently, the application is dismissed with costs.

DATED and SIGNED at NAIROBI 11TH OCTOBER 2018

A.O. MUCHELULE

JUDGE

DATED and DELIVERED at NAIROBI 17TH OCTOBER 2018

J.N. ONYIEGO

JUDGE