



REPUBLIC OF KENYA IN THE HIGH COURT
OF KENYA AT KAKAMEGA

SUCCESSION CAUSE NO. 447 OF 2011

IN THE MATTER OF THE ESTATE OF

THE LATE PETRO MASHETI ASAMBA.....DECEASED

AND

ROBAI KHANYELELI ANDALA.....PETITIONER

VERSUS

KENNEDY LIYALI MASHETI)

SAMUEL AMBEYI)

ISAAK ASUTSA).....OBJECTORS/RESPONDENTS

JOY ATIENO ALIAS MARY LIHAVI)

R U L I N G

1. This succession cause relates to the estate of the late Petro Masheti Asamba who was the father to the petitioner and grandfather to the applicants/objectors herein. The deceased left behind land parcel No. **Kakamega/Igulu/1157**.
2. The applicants have filed an application dated 4th January, 2016 seeking for orders that:-
 - (1) That the letters of administration issued on 1st December, 2011 and the certificate of confirmation of grant issued on 4th February, 2015 be revoked or annulled.
 - (2) Spent.
 - (3) That subsequent registration of land made on 12th March, 2015 to **Robai Khanyeleli Andala, Floice Ayuma Muruka and Selina Gwahala** to hold in trust for **Kennedy Liyayi Andala** be cancelled.

That costs of this application be in the cause.

3. The application is premised on the grounds on the face of the application and is supported by the affidavit of Kennedy Liyali Masheti, the 1st objector/applicant. The grounds in support of the application are that:-
 - (a) That the letters of administration and certificate of confirmed grant made and issued on 4th February, 2015 was obtained fraudulently by concealment material facts.
 - (b) The objectors/beneficiaries herein have been disinherited of their shares in land parcel No. KAK/IGUHU/1157.
 - (c) The objectors were completely left out and no consent was ever sought from them.

4. The application was opposed by petitioner vide her replying affidavit deponed on the 23rd February, 2016. The petitioner depones that the objectors are the children of her late brother **Jeremiah Masheti**. That their father was also survived by two other children, her sisters Selina Gwahala Mukoya and Floice Ayuma Muruka. That after the death of her father (herein referred to as the deceased), she filed this

succession cause. That during the prosecution of the succession cause, the 1st objector and his siblings were indifferent and refused to participate in the proceedings. That she thereupon caused their share to be registered in her name in trust for them. That she is willing to exercise 2.0 ha (5 acres) out of land parcel No. Kakamega/Iguhu/2533 and transfer it to the objectors.

5. The 1st objector states in his affidavit that the petitioner filed the succession cause secretly without the consent of the objectors. That the petitioner sub-divided and transferred the suit land to herself and her sisters and registered herself to hold some land in trust of Kennedy Liyali Masheti, therefore disinheriting the other beneficiaries. That the petitioner has failed to administer the estate diligently and has disinherited some beneficiaries of the estate. That it is in the interest of justice that the grant issued to the petitioner on 1st December, 2011 be revoked and the subsequent transfer made in respect of the suit land and the new numbers created thereof be cancelled.

6. The other siblings of the 1st objector, **Samuel Ambeti, Isaak Asutsa Shitsukane and Mary Lihavi alias Joy Atieno** have sworn affidavit supporting the assertions of their brother Kennedy Liyali Masheti.

7. A copy of a green card annexed to the affidavit of the 1st objector shows that the petitioner is registered as holding of 1.6 ha of land parcel 1157 in trust of Kennedy Liyali Mashete, the 1st petitioner.

8. The petitioner admits that she did not involve the objectors in the succession cause because they were indifferent to the filing of the succession cause. The petitioner admitted that the objectors are entitled to share the deceased's estate.

9. I have perused the court file. I have noted that the 4 objectors were named in the chief's letter that accompanied the filing of the succession cause. The 4 objectors were also named in form P & A 5 as the survivors of the deceased. However, they were not summoned to appear before court during the confirmation of grant. They did not sign a consent to indicate that they agreed with the proposed mode of distribution. If it is true that the objectors were indifferent, the petitioner did not serve them with a citation as required by rule 21 of the Probate & Administration Rules

10. The petitioner says that she sub divided the land and reserved 1.6 ha in her name in trust o the objectors. However, the search certificate filed in court indicates that the said parcel was registered in the name of the petitioner in trust of Kennedy Liyali Masheti. There is thereby no land reserved for the other objectors/applicants. The said objectors have thereby been disinherited. In any case Kennedy was not called to court to be asked whether he was satisfied with what was given to him.

11. The petitioner says that she is willing to exercise 2.0 Ha from land parcel Kakamega/Iguhu/2533 and transfer it to the objectors. Well, that is for the parties themselves to agree on and not for the court to force any of the parties to it.

12. The petitioner is a daughter to the deceased. Going by the provisions of section 66 of the Probate and Administration Rules, she ranked higher than the objectors in applying for grant of letters of administration. There is no allegation that she failed to disclose any material information to the court or that she obtained the grant fraudulently. There is thereby no reason of revoking the grant. The grant will thereby stand.

13. Section 76 of the Law of Succession Act (Cap 160 of the Laws of Kenya) provides that:-

“A grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by any interested party or of its own motion –

(a) That the proceedings to obtain the grant were defective in substance;

(b) - (d)

14. The objectors were not involved in the distribution of the estate. The petitioner thereby failed to proceed diligently with the administration of the estate by not involving the objectors in the distribution of the estate. The proceedings to obtain the grant were in the premises defective in substance. This is a sufficient ground to revoke the certificate of confirmation of grant.

15. In the foregoing, the certificate of confirmation of grant issued by the court on 4th February, 2015 is hereby revoked and annulled. The subsequent sub-division and registration of land parcel Kakamega/Iguhu/1157 and the resultant titles thereof are hereby cancelled. The title to the said land is to revert to the name of the deceased, **Petro Masheti Asamba** so as to enable fresh distribution of the estate.

16. The court has noted that the matter was filed in 2011. So as to enable the succession cause to move forward, it is hereby ordered that the petitioner is to file within two weeks of the delivery of this ruling fresh summons for confirmation of grant together with her preferred mode of distribution and if the objectors are not agreeable to the same to file a protest within two weeks of service of the said summons.

Orders accordingly. Each party to bear its own costs.

Delivered, dated and signed in open court at Kakamega this 8th day of November, 2018.

J. NJAGI

JUDGE

In the presence of:

.....for **Petitioner**

Arwanda holding brief Mukavale.....for Respondents

GeorgeCourt assistant

Parties : Absent .