



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT EMBU**

**SUCCESSION CAUSES NO. 280 OF 2011**

***In the matter of the Estate of KIRIRO MUKUI (Deceased)***

**EDWARD WAWERU KIRIRO.....APPLICANT**

**V E R S U S**

**DUNCAN KAMAU KIRIRO.....RESPONDENT/ADMINISTRATOR**

**R U L I N G**

1. This is a ruling on an application for revocation/annulment of grant issued and confirmed on 21/06/2012 in favour of the respondent/administrator Danson Kamau Kiriro on grounds that it was obtained fraudulently and by non-disclosure of facts material to the case.
2. The grounds supporting the application are that: -
  - a) *That the applicant is a grandson of the deceased whose father Paul Kiura is deceased and was entitled to a share in the estate.*
  - b) *That succession cause was filed secretly without the knowledge of the applicant.*
  - c) *That the mode of distribution is not acceptable to the applicant.*
3. The respondent opposed the application relying on his replying affidavit sworn on 10/11/2015. He deposes that he was appointed administrator on 24/08/2011 and the grant confirmed on 21/06/2012 whereas the estate of the deceased was distributed among the beneficiaries.
4. It is further stated that the late son of the deceased Paul Kiura died in the year 2000 without having been married and had no children. The person who has filed these summons for revocation is one Edward Kiriro a son of the deceased.
5. The respondent further states that the interested party purportedly the son to the late Paul Kiura is not known to any of the seven (7) beneficiaries in the estate of the deceased and that the applicant has not annexed the authority to act on behalf of the said Kariuki Kiura.
6. It is further stated that the applicant is dishonest in that he is pursuing another share for himself through bringing in a stranger in this case. The applicant complains that his own sisters were given bigger shares than he got.
7. The respondent in his testimony said a family meeting was called before the year 2011 before this cause was filed. He was nominated to be the administrator of the estate because his two brothers Ndege and Kirima were working in Nairobi while he was resident at the family home in Ngirambu making it easier for him to file and follow up the case. Every member of the family contributed funds for the case except the applicant.
8. The applicant was informed of the intention to file the intention to file the case like every other member of the family but he did not cooperate. His allegations are false and intended for self-gain.
9. The respondent annexes an agreement dated 23/04/2007 between the applicant and a 3<sup>rd</sup> party in which the applicant purported to sell one acre out of deceased's land L.R. Ngariama/Ngiriambu/886 four (4) years before this succession cause was filed. Due to this act, the respondent states the applicant is a fraudster and does not deserve the order sought for.
10. The respondent on the other had annexed his academic admission letters to tertiary institutions and a certificate of medical examination. In his supplementary affidavit, the applicant states that during the lifetime of his deceased mother, it had been agreed he sells one acre of land

to pay his school fees since he had no one to support him. The proceeds he received from the sale of the land was used to pay his school fees. The applicant argues that this one acre should be removed from the total acreage of the deceased's land before the land is distributed in equal distribution of the estate, so that he does not lose part of his inheritance.

11. The parties gave *viva voce* evidence which explains their averments in their affidavits.

12. The applicant and the respondent are sons of the deceased. For him to be appointed an administrator is within the law as provided for by Section 66 of the Law of Succession Act. There are three other sons of the deceased and four daughters. The respondent did not dispute that the respondent was becoming the administrator in a family meeting. All the beneficiaries are satisfied with the mode of distribution in the grant and do not support the revocation of grant application. The four sons of the deceased were given equal shares of 1.86 acres the applicant inclusive. The applicant has not shown any good reason why the grant should be revoked.

13. The applicant says he had the authority of his mother to sell one acre of the land to pay his school fees and that the one acre was not to be set off from his share. The instructions were to remove it and have the rest of the land shared among the beneficiaries.

14. All the other beneficiaries disputed the applicant's evidence. In my view, the land in question belonged to the deceased Kiriro Mukui but not to his wife who purportedly gave the respondent the authority to sell one acre.

15. After considering the evidence of the parties in this application, I make the following observations: -

- i. That the applicant as well as other beneficiaries had knowledge of the filing of this case.*
- ii. That any authority given to sell or dispose of land of the deceased by a 3<sup>rd</sup> party is not valid.*
- iii. That the respondent as the administrator is favoured by the law.*
- iv. That distribution of the estate was done fairly and equitably among the beneficiaries.*

16. The applicant has brought this application under Section 76 of the Law of Succession Act. He says he was not informed of the filing of the case and that the administrator acted fraudulently and failed to disclose facts material to this case.

17. It is my considered opinion that the applicant has failed to satisfy the ground he relies on in this application.

18. Consequently, it is my finding that this application lacks merit and it is hereby dismissed.

19. Any prohibitory orders, restrictions or cautions placed against the title of Ngariama/Ngiriambu/886 be and is hereby lifted.

20. Each party to meet their own costs.

21. It is hereby so ordered.

**DELIVERED, DATED AND SIGNED AT EMBU THIS 6<sup>TH</sup> DAY OF NOVEMBER, 2018.**

**F. MUCHEMI**

**J U D G E**

**In the presence of: -**

**Applicant**

**Administrator/Respondent**

**All beneficiaries**