



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MACHAKOS
SUCCESSION CAUSE NO. 367 OF 2006
IN THE MATTER OF THE ESTATE OF MUNYASYA KASYOKA
NGILA ALIAS MUNYASYA KASYOKA – (DECEASED)

PETER MUTUA MUNYASYA.....1ST PETITIONER/RESPONDENT

ISAIAH MUTUKU MUTISO.....2ND PETITIONER/RESPONDENT

VERSUS

JOCKSON KINGOO KANGUTA.....INTERESTED PARTY

AND

JACKSON MUISYO KIOKO.....APPLICANT/OBJECTOR

RULING OF THE COURT

The Application

1. The application before the court is Summons for Revocation or Annulment of Grant under **rule 44(1) of the Law of Succession Act**. The application prays for orders;

- a. That the said **Jackson Muisyo Kioko** be enjoined as a dependant in the estate of the late **Munyasya Kasyoka Ngila alias Munyasya Kasyoka** deceased.
- b. That the grant of letters of Administration to **Peter Mutua Munyasya and Isaiah Mutuku Mutiso**, made on the 12th day of October, 2012, be revoked.
- c. That costs of this application be provided for.

2. The application is founded on the grounds set out therein and is supported by affidavit of **Jackson Muisyo Kioko** the Objector herein sworn on **18th September, 2013**. The applicant's case is that **Paul Kioko Kasyoka** is brother to **Munyasya Kasyoka Ngila alias Munyasya Kasyoka** – deceased whom the estate relates. The said **Paul Kioko Kasyoka** is the applicant's father and he died on the 23rd April, 2009- Pursuant to annexed copy of death Certificate marked PKK1. Prior to his demise his son and brothers petitioned a Succession Cause to the estate of the late **Munyasya Kasyoka** where a grant of letters of Administration was issued to one a **Mr. Peter Mutua Munyasya and Isaiah Mutuku Mutiso**

on the 12th day of October, 2012 (*See annexed letter 54 marked PKK2*). The grant of letters issued to the said Petitioners, show that the applicant's late father **Paul Kioko Kasyoka** should share ½ share of L.R.No. Mitaboni/Mutituni/2386 with **Ngila Munyasya, Isaiah Mutuku Mutiso, Peter Mutua Munyasya, Joseph Kaloki Munyasay and Kasyoka Munyasya**. It is the applicant's case that the said distribution was not done fairly and lawfully since as of the time the purported consent dated 1st August, 2012 was done and filed in court, the applicant's father had already passed on and the applicant's house/family was not consulted and information was concealed towards the distribution of the said estate. It is the applicant's case that his father **Paul Kioko Kasyoka** – (now deceased) ought to share equally the half (½) share with the late **Munyasya Kasyoka** – (deceased) whom this estate relates and not as per the grant. The applicant's case is that for the interest of justice his application be allowed as prayed.

The Response

3. The application is opposed vide a replying affidavit of **Peter Mutua Munyasya** sworn on **25th September, 2013**. The respondent's case is that he is a co-respondent and competent and authorized to swear this affidavit for and on behalf of **Isaiah Mutuku Mutiso** the co-respondent. The respondents' case is that letters of administration intestate have been issued for the estate of **Munyasya Kasyoka** (deceased) to the petitioners in this petition who are sons to the deceased. The applicant is a son to Paul Kioko Kasyoka (deceased) who is a brother to the deceased and one of the beneficiaries under the grant confirmed on 12th October, 2012. The respondent's case is that the identities of all beneficiaries and their respective shares have been properly specified and the applicant's father is listed as one of the beneficiaries and his corresponding shares indicated. The respondents state that the applicant's claim is under the share distributed to **Paul Kioko Kasyoka** (deceased), his father who is a beneficiary under the grant thus the applicant has no independent claim for entitlement under the deceased's estate save through his father. The respondents further state that since the late **Paul Kioko Kasyoka** is deceased, the applicant has no *locus standi* to claim the share of his deceased father's estate without first obtaining letters of Administration over the estate of his father. The respondents' case is that the application/objection is baseless, malicious and intended to obliterate the course of justice, and should be dismissed.

Submissions

4. Parties filed submissions which I have considered. The issues for determination are as follows;

- i. Whether the Notice of Appointment of Advocates on record dated 10th October, 2012 is in order or whether it violates provisions of **rule 9(5) Probate and Administration Rules**.
- ii. Whether the applicant/objector can maintain these proceedings without taking out letters of administration in the estate of his father-deceased.

Determination

5. To address the two issues together, this court takes note that the application is objected to on purely technical grounds which do not raise the merits of the issues. This court is satisfied that the applicant has shown sufficient interest in the Succession Cause, and that it is important that his late father's share be determined in a transparent and fair order. The nature of objection proceedings in Succession matters allow applicants to raise issues before an estate can be distributed. A technicality in procedure cannot therefore override an issue of substantive justice. **Section 47** of the **Law of Succession** confers on this court powers and jurisdiction to entertain any application and to determine any dispute under the Act and to pronounce such decrees and to make such orders as to sustain the end of justice. Further, **Rule 44** of the **Probate and Administration Rules** gives any person interested in the Estate of a deceased to seek redress pursuant to the provisions of **Section 76** of the **Act**. Once the court is satisfied with the applicant's application to revoke the grant, and the orders are granted as prayed, then the twin technical issues above maybe addressed in subsequent proceedings, if need be.

6. Pursuant to the foregoing, the application before the court by the Objector/Applicant is allowed as prayed except that parties shall bear own costs.

Orders accordingly.

.....

E.K.O. OGOLA

JUDGE

DATED, SIGNED AND DELIVERED AT MACHAKOS THIS 21ST DAY OF FEBRUARY, 2017

.....

DAVID KEMEI

JUDGE

In the presence of:

Mutune – for Mbindyo for Applicant

Nyaata – for Musyoka for Respondent