



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MACHAKOS
SUCCESSION CAUSE NO. 149 OF 2008

IN THE MATTER OF THE ESTATE OF NZIOKA MWANIKI (DECEASED)

TABITHA KAMENE NZIOKA..... OBJECTOR/APPLICANT

VERSUS

DANIEL MUTUA NZIOKA.....PETITIONER/RESPONDENT

RULING

1. The Objector/Applicant has filed an application dated 11/11/2016, seeking the following orders namely:-

1. THAT JOYCE MWENDE NZIOKA, TABITHA KAMENE NZIOKA and DANIEL MUTUA NZIOKA be appointed as administrators of the estate of Nzioka Mwaniki (deceased).

2. THAT costs of the application be in the cause.

The application is supported by the annexed Affidavit of JOYCE MWENDE NZIOKA and TABITHA KAMENE NZIOKA and on the following grounds namely:-

1. The deceased herein died intestate on 24/10/2005 and the Petitioner/Respondent subsequently filed letters of Administration stating that he was the only beneficiary of the estate of the deceased.

2. The Grant of letters of Administration intestate was confirmed vide a certificate of confirmation of Grant dated 26/2/2009 and the same was later annulled by the court vide a court's ruling delivered on 4/7/2013 since it had been obtained fraudulently by concealment of material facts.

3. On 27/7/2015, Justice Edward Muriithi gave an order that Objector/Applicant, the Petitioner and the other beneficiaries of the estate of the deceased do agree on Administrators and if they failed to agree the Honorable Court would appoint Administrators.

4. The Objector/Applicant and other beneficiaries have proposed and agreed to have JOYCE MWENDE NZIOKA, TABITHA KAMENE NZIOKA and DANIEL MUTUA appointed as Administrators over the estate of the deceased but the Petitioner/Defendant and another beneficiary called MARY KATUNGE have always refused and or objected to the proposal.

5. The sole reason for their refusal or objection is that they want the Petitioner/Respondent to be the sole Administrator over the estate of the deceased.

6. The parties herein and all the beneficiaries have failed to agree on who should be the

Administrator of the estate of the deceased hence there is need for the court to appoint the Administrators.

2. The Petitioner/Respondent was duly served with the application but he has failed and or neglected to file either a replying Affidavit or grounds of opposition indicating whether he objects or agrees to the Applicants prayers sought in the application.

3. Determination

The only issue for determination by this court is whether or not the Applicant has presented sufficient reasons to justify this court to appoint Administrators for the estate of NZIOKA MWANIKI (deceased). It is noted from the onset that the Petitioner/Respondent has not filed any Replying Affidavit or grounds of opposition to the Applicant's Application dated 11/11/2016. The Application therefore is unopposed and thus the facts set out on the Applicant's Supporting Affidavit remain uncontroverted. I noted the Petitioner/Respondent had been served with the Application as confirmed by the affidavit of service. The Grant that had been issued herein and confirmed on the 26/2/2009 had since been revoked by this court vide a ruling dated 4/7/2013. Since then it is clear that there is no Administrators in place to oversee the deceased's estate. The parties herein were advised on the 27/7/2015 to agree and nominate Administrators failing which the court would appoint Administrators. It seems the parties and beneficiaries have failed to agree on the Administrators as explained by the Applicant in her affidavit. The Applicant has averred that she managed to secure the consent of all the beneficiaries except the Petitioner herein and one **ESTHER KATUNGE**. A perusal of the consent to appointment of Administrators reveals that all the beneficiaries except the Petitioner and one **ESTHER KATUNGE** are in favour of having three Administrators being appointed namely:

JOYCE MWENDE NZIOKA, DANIEL MUTUA NZIOKA and TABITHA KAMENE NZIOKA. Since the majority of the beneficiaries are in agreement with the Applicant's proposal this court will accept their decision. Suffice to say that since the annulment and revocation of the certificate of confirmation on 4/7/2013 the estate has been without an Administrator. The need for an Administrator is necessary in order to protect the estate of the deceased for the benefit of the beneficiaries. It is also noted that the order of revocation and annulment has not been appealed against. I find the Applicant's Application dated 11/11/2016 merited. This court now orders that **JOYCE MWENDE NZIOKA, TABITHA KAMENE NZIOKA and DANIEL MUTUA NZIOKA** be appointed as Administrators of the Estate of NZIOKA MWANIKI (deceased).

Costs of the application shall be in the cause.

Dated and Delivered at Machakos this **7TH** day of **MARCH** 2017.

D. K. KEMEI

JUDGE

In the presence of:

Muia for Nyakundi for the Applicant.....

C/A: Munyao