

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 1664 OF 2002

IN THE MATTER OF THE ESTATE OF NDURUMA NJUGUNA (DECEASED)

RULING

1. The deceased herein died on 15th June 1991. Representation to his estate was sought in a petition filed herein on 2th July 2002, by Frederick Njuguna Mwangi, in his purported capacity as stepson of the deceased. He listed himself, and a dead widow of the deceased as the survivors. The deceased was alleged to have died possessed of Loc. 2/Kinyona/T78 and 159 and Makomboki Tea Factory Shares No. 02218/99 and 02219/99. A grant was made on 18th September 2007.

2. On 30th August 2016, a summons was lodged herein for revocation of the grant on record. It was at the instance of Joseph Kimemia Mwangi and Wilson Njuguna Mwangi. Their joint affidavit was sworn on 23rd August 2016. They are nephews of the deceased. They allege that the applicant concealed the existence of several survivors, such as themselves and other nephews.

3. The application was served on the respondent. There is an affidavit of service sworn on 21st October 2016. There is no response to the application.

4. Directions were given on 15th November 2016 for disposal of the application by way of written submissions. The applicants lodged their submissions at the registry the same day. They argue that there was non-compliance with section 51(2) of the Law of Succession Act, Cap 160, Laws of Kenya and Rule 7(1) of the Probate and Administration Rules.

5. Section 51 is clear on the names of the persons who ought to be disclosed as survivors of the deceased. The obligation is to disclose both members of the nucleus family and the extended family. Those in the extended family to be disclosed should be the parents of the deceased and his siblings, and the children of any child or children of his themselves deceased.

6. The administrator only listed himself as the sole survivor of the deceased. He described himself as a stepson of the deceased. The applicants are nephews of the deceased. There is no suggestion by the applicants that the administrator was not a child of the deceased, or as a person who was not entitled to representation in the estate or even to inherit from the estate. That would amount to an acknowledgement that the administrator was a child of the deceased in terms of section 3(2) of the Law of Succession Act.

7. The applicants describe themselves as nephews of the deceased. They are children of the deceased's brother who is said to be himself dead. The name of the alleged dead brother of the deceased is not disclosed. Documents have been attached to the affidavit in support of the application to connect the applicants to the deceased. There is a letter from the Chief of Kinyona Location dated 12th January 2011, which lists the applicants and others as survivors of the deceased, but there is no attempt to indicate how they are related to the deceased. All what is on record is an affidavit where they assert to be nephews of the deceased, but there is nothing to justify that assertion. Some form of evidence is necessary in such a case as the present where the applicant seek revocation of a grant, and where they accuse the administrator of fraud and non-disclosure. They have a duty to themselves make a full disclosure.

8. I am not satisfied that a proper case has been made out for revocation of the grant on record. I shall dismiss the said application but with no orders as to costs, for the administrator did not reply to it. The estate comprises of assets within Kinyona Location of Murang'a County. The applicants are resident at Kangari of Murang'a County. The matter shall accordingly be transferred to the High Court of Kenya at

Murang'a for final disposal.

DATED and SIGNED at NAIROBI this 3RD DAY OF MAY, 2017.

W. MUSYOKA

JUDGE

DELIVERED and SIGNED this 5TH DAY OF MAY, 2017.

M. MUIGAI

JUDGE