



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MACHAKOS
SUCCESSION CAUSE NO.108 OF 2010

IN THE MATTER OF THE ESTATE OF MBUSYA LAI KAMWELI (DECEASED)

NAUMI MULONDU MBUSYA) 1ST PETITIONER

SAMMY M. MBUSYA).....2ND PETITIONER

VERSUS

CHARLES MBUSYARESPONDENT

RULING OF THE COURT

1. The Petitioner/Applicant has filed an Application dated 19/11/2014 seeking for the following prayers:

(i) That this court be pleased to amend and/or rectify the grant issued to the Petitioners on 23/4/2013.

(ii) That upon granting prayer one above the said grant of letters of administration be confirmed accordingly.

(iii) Costs of the Application be in the cause.

2. The Application is supported by the annexed affidavit of Sammy Mutinda Mbusya the 2nd Petitioner herein sworn on even date and further on the following grounds:-

(a) That the first Petitioner Naumi Mulondu Mbusya has passed away and her name should be removed from the grant.

(b) That the grant be amended to reflect the name of the 2nd Petitioner Sammy Mutinda Mbusya.

3. The Application has been opposed by one of the beneficiaries Charles Kitunga Mbusya who has raised the following grounds of objections:-

(a) That the deceased herein had two (2) wives namely Naumi Mulondu Mbusya whom he married in accordance with Kamba customary law.

(b) That the Petitioners have conducted these proceedings without involving the house of Kalondu Mbusya with the intention of disinheriting them.

(b) That the Applicants request to be made the sole administrator is vehemently objected and the

Respondent prays that the name of the Kalondu Mbusya be brought in as a Petitioner so as to take care of the second house.

(d) That the grant had been issued erroneously by leaving out the second house.

4. Parties filed written submissions. It was submitted for the Petitioner/Applicant that the grant be rectified in view for the demise of the Co-Petitioner so as to leave the Applicant be the sole Petitioner who is to administer the estate pursuant to Section 82 of the Law of Succession Act. It was further submitted that the Respondent shall be at liberty to seek for revocation of grant in line with the Provisions of Section 76 of the Law of Succession Act if they have grounds for the same.

5. It was submitted for the Respondent that in view of the fact that the Applicant had not included the Respondent's mother one Kalondu Mbusya who is a co-wife to the deceased 1st Petitioner should now be brought on board to be the Applicants Co-Petitioner so as to ensure both houses of the late Mbusya Lai Kamweli are taken care of adequately. It was further submitted that the Petitioners had in the past conducted the proceedings in the absence of the Respondent and his family and it would be now appropriate to have the mother of the Respondent brought on board to substitute the deceased Petitioner and to ensure that both houses of the deceased Mbusya Lai Kamweli are adequately represented.

6. I have considered the 2nd Petitioner's Application dated 19/11/2014 together with the rival affidavits. I have also considered the submissions of the learned counsels for the parties herein. It is not in dispute that the first Petitioner Naumi Mulondu Mbusya has since died as confirmed by the certificate of death annexed to the 2nd Petitioner's affidavit in support of the Application. Ordinarily whenever a Co-petitioner dies, the grant is rectified and a new grant is reissued in the name of the remaining Petitioner who shall then continue with the task of administering the estate of a deceased person. However, in the present case, the Respondent has vehemently opposed the 2nd Petitioner from being made the sole administrator on the ground that the Respondent's mother one Kalondu Mbusya should be brought on board as a Co-administrators so as to take care of the Respondent's family by virtue of the fact that the said Kalondu Mbusya was one of the wives of the late Mbusya Lai Kamweli. It is noted that during the initial filing of this cause, the Petitioners had presented a Chief's letter dated 18/1/2010 in which all the family members of the deceased Mbusya Lai Kamweli were listed and which included the Respondent and his mother Kalondu Mbusya. A perusal of the record and pleadings filed reveal that the Petitioners and the Respondent have filed several Applications regarding the manner in which some of the properties for the deceased were being handled and or administered and that the parties herein were advised by the court to proceed to file for confirmation so that the respective shares of each beneficiary are indicated. It seems the parties are yet to do so. The only hint towards that end is the Applicant's request in this Application that upon the rectification of the grant, this court do proceed to confirm the grant. I must point out that it is not possible to allow confirmation of grant at this stage since there is need for a fresh summons for confirmation in which all the shares of the beneficiaries are indicated and backed by a consent by beneficiaries to the distribution of the estate. This would then enable any aggrieved beneficiary or interested party to accept or file affidavits of protest and the court would then determine the objections if any in line with the provisions of Section 76 of the Law of Succession Act. It is noted that the Respondent all along has not taken up the avenues provided under Section 76 of the Law of Succession Act to seek to revoke the grant issue to Applicant and his mother. He can now wait to do so once the summons for confirmation of grant is made if his interest has not been taken care of. The Applicant herein filed a further affidavit dated 21/1/2016 in which he annexed a copy of consent signed by some beneficiaries while others did not and he seeks the court to summons those who have refused to sign the consent to explain their reasons for refusal. Hence there appears to be some stalemate. The Petition was lodged in the year 2010 and is now well over six (6) years. It would be appropriate to have the matter finalized so that the beneficiaries access their rightful shares in the estate of the deceased. It would be in the interest of justice and in line with the Provisions of Rule 73 of the Probate and Administration rules to allow the request for rectification and allow the Applicant remain as sole Administrator and who shall be given conditions to proceed to file for confirmation of grant and all beneficiaries shall be at liberty to consent or object to the proposed mode of distribution.

7. In the result the Petitioners Application dated 19th November, 2014 is allowed in terms of prayer (1) and (3) only. The grant issued on 23rd April, 2013 and dated 10th May, 2013 is hereby rectified and a fresh grant be reissued in the names of **SAMMY M. MBUSYA**. The said SAMMY M. MBUSYA is ordered to file fresh Summons for Confirmation of Grant within the next thirty (30) days from the date hereof and to ensure all persons beneficially entitled and their respective shares are factored. Costs shall be in the cause.

It is so ordered.

Dated, signed and delivered at **MACHAKOS** this 17th day of **JULY** 2017.

D. K. KEMEI

JUDGE

In the presence of:-

Mrs Nzei for Musyimi for Petitioners

C/A: Kituva