



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITUI

SUCCESSION MISC. APPLICATION NO. 22'A' OF 2016

IN THE MATTER OF THE ESTATE OF NG'ARWA MUSISYA KALELI (DECEASED)

NGENE NG'ARWA.....1ST APPLICANT

MARY NG'ARWA.....2ND APPLICANT

VERSUS

MBIU NG'ARWA.....1ST RESPONDENT

MASAA NG'ARWA.....2ND RESPONDENT

R U L I N G

1. **Ng'arwa Musisya Kaleli**, (the Deceased) died intestate on **13th July, 2009** at **Nairobi West Hospital**. A grant of Letters of Administration Intestate (grant) in respect of his Estate were issued to **Mbiu Ng'arwa** and **Masaa Ng'arwa** on the **7th July, 2010**.

2. On the **22nd October, 2010** **Ngene Ng'arwa** and **Mary Ng'arwa**, the 1st and 2nd Applicants respectively filed an application seeking revocation of the grant on the grounds that:

(i) The proceedings to obtain the grant were defective in substance.

(ii) The grant was obtained by means of untrue allegations of fact.

(iii) The grant was obtained fraudulently by making of a false statement or concealment from the Court of something material to the case.

3. The 1st Applicant swore an affidavit in support of the application where he deponed that: The Respondents are son and daughter to the Applicant and she (1st Applicant) is one of the widows of the Deceased. The Deceased was polygamous, married to five (5) wives. The 1st Respondent is from the 1st house while the 2nd Respondent is from the 4th house. Family members were not consulted prior to the Petition being filed in Court. Other family members did not renounce their right to apply for representation. Substantial assets namely:

- ***Bank Accounts with Kenya Commercial Bank Limited, Equity Bank Limited and Barclays Bank Kenya Limited.***
- ***Shares in the Kenya Commercial Bank Limited.***
- ***Life Insurance proceeds with the American Life Insurance Company Limited (ALICO).***

- *Two (2) unsurveyed/unadjudicated parcels of land at Ukasi.*
- *Two (2) unsurveyed/unadjudicated plots within the Ukasi township/trading centre.*
- *A sum of Kshs. 440,000/= owed to the Deceased by one Kisau Molo.*
- *A debt of Kshs. 2,200,000/= owed to the Deceased by the Town Council of Mwingi.*

Were not included as part of the Estate of the Deceased; some of the beneficiaries of the Estate did not sign **Form 38** while others were deceived in believing that it was intended to collect a debt of **Kshs. 2,200/=**; Some of the beneficiaries' signatures were forged; Persons indicated as **Joshua Kyalo** and **Mbiti Mbaluka** are not known to the family therefore could not have been sureties or guarantors.

4. Further, she deponed that widows of the Deceased were more suited to be administrators of the Estate. There was no guarantee that the children of the Deceased would safeguard the property for their benefit.

5. That despite having failed to disclose bank accounts, the Respondents were trying to access them an act that prompted family members to complain to the **District Commissioner, Mwingi**.

6. The Respondents were duly represented by the firm of **B. M. Musyoki and Co. Advocates** did not respond to the application. On the hearing date beneficiaries to the Estate of the Deceased from the 1st, 2nd, 3rd and 5th households were present except the 4th household whose members included the Respondents.

7. Circumstances under which a grant of representation can be revoked are stipulated in **Section 76** of the **Law of Succession Act** that provides thus:

“A grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by any interested party or of its own motion—

(a) that the proceedings to obtain the grant were defective in substance;

(b) that the grant was obtained fraudulently by the making of a false statement or by the concealment from the court of something material to the case;

(c) that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently;

(d) that the person to whom the grant was made has failed, after due

notice and without reasonable cause either—

(i) to apply for confirmation of the grant within one year from the date thereof, or such longer period as the court order or allow; or

(ii) to proceed diligently with the administration of the estate; or

(iii) to produce to the court, within the time prescribed, any such inventory or account of administration as is required by the provisions of paragraphs (e) and (g) of section 83 or has produced any such inventory or account which is false in any material particular; or

(e) that the grant has become useless and inoperative through subsequent circumstances.”

8. This is a matter where the Deceased was survived by thirty-two (32) beneficiaries. Having been polygamous, each house should have identified a representative. In the case of **Mbaluka Maingi vs. Veronica Nthemba (2015) eKLR** it was held thus:

“Where there are more than one (1) family or one (1) household, the Administrator of the

deceased's estate cannot be a single person, but rather representatives from each house. This is to ensure that each representative acts as trustee for the other members of that house or family that he or she represents."

9. It is also stated that not all assets of the Estate of the Deceased were listed. The Assets disclosed are various parcels of land situated in **Mwingi, Kanzanzu, Kivau and Mutwang'ombe**. The total value was omitted. It is now disclosed and not denied that some assets and liabilities were not disclosed. If indeed some signatures purporting to be for beneficiaries were forged. This is an issue to be enquired to establish if the Respondents were actuated by some fraudulent intent.

10. In the result, I find conditions for revoking of the grant as provided in **Section 76** of the **Law of Succession Act** having been established on a balance of probabilities. In the circumstances, the grant issued herein be and is hereby revoked and I direct all the beneficiaries to appear before me on the **19th October, 2017** for purposes of identifying **four (4)** family members to be appointed as Administrators of the Estate and issuance of a fresh grant.

11. The Respondents are condemned to pay costs of the application.

12. It is so ordered.

Dated, Signed and Delivered at Kitui this 12th day of July, 2017.

L. N. MUTENDE

JUDGE