

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

FAMILY DIVISION

SUCCESSION CAUSE NO.505 OF 2013

IN THE MATTER OF THE ESTATE OF HOTENSIAH WAMORO MURITU (DECEASED)

EVANS MUCHAI MURITU.....1ST OBJECTOR

MARY WAIRIMU MURITU.....2ND OBJECTOR

PETER NG'ANG'A MURITU.....3RD OBJECTOR

MIRIAM NJERI MURITU.....4TH OBJECTOR

VERSUS

JAMES MBUGUA MURITU.....1ST PETITIONER

ESTHER WAMBUI MURITU.....2ND PETITIONER

RULING

1. In the Senior Principal Magistrate's Court at Kiambu in Succession Cause No. 150 of 1992 the deceased was Charles Muritu Gacheru. He died intestate on 14th March 1992. He left a widow Hotensiah Wamoro Muritu (the deceased in the instant Cause) and the following children:- Mary Wairimu Muritu (2nd objector), James Mbugua Muritu (1st petitioner), Margaret Wamaitha Muritu, Evans Muchai Muritu (1st objector), Esther Wambui Muritu (2nd petitioner), Miriam Njeri Muritu (4th objector) and Leonard Peter Ng'ang'a (3rd Objector). The estate of the deceased comprised motor vehicle registration number KAA 405Q, proceeds in A/C No. 141204938 at KCB Kipande Branch in Nairobi, proceeds in A/C No. 0120174673008 at Standard Chartered Bank Limuru Branch, LR No. 150/13 original No. 150/2/1 Riara Ridge and Kabete/Kabete/T.436. The widow applied for letters of administration intestate. A grant was issued to her which was confirmed on 14th October 1993. In the distribution she got LR No. 150/13 original No. 150/2/1 Riara Ridge as absolute proprietor and Margaret Wamaitha Muritu got Kabete/Kabete/436 as absolute proprietor. The two were then to receive the proceeds of the two bank accounts. In the High Court at Nairobi in Succession Cause No. 2639 of 2014, the objectors filed summons under **section 76** of the **Law of Succession Act (Cap. 160)** for the revocation of the grant. The grounds were that their mother had failed to consult them, or seek their consent, in the Cause. They stated that they had not been involved in the petition or/fraudulently and confirmation of the grant with the result that they had been disinherited. The application is pending before this Court.
2. When Hotensiah died on 30th July 2012 the petitioners sought the grant of letters of administration intestate in the instant Cause. Her estate was indicated as LR 150/13 original No. 150/2/1 Riara Ridge which had been subdivided into parcels LR 150/36, 39, 42, 43, 44, 45 and 46. The total estimated value was Kshs.84,000,000/= The objectors objected to the making of the grant saying that the property held by her was not hers but was held as the administrator of the estate of their late father. They repeated the averments contained in the summons for revocation and stated that

they had been fraudulently left out of the distribution of their late father's estate. They asked that this petition be stayed to await the outcome of their summons for revocation.

3. The petitioner filed a replying affidavit which substantially responded to the allegations contained in the summons for revocation. They stated, among other things, that the summons had been brought too late in the day.
4. The other complaint was that the objection was not followed by an answer to the petition and cross-petition as is required by **sections 67, 68 and 69** of the **Act** and **rule 17** of the **Probate and Administration Rules**. They relied on the decision in **In the Matter of Amar Kaur Matharu (deceased) HC Succ Cause No. 2240 of 2012 at Milimani** and asked that the objection be struck out.
5. I have considered the affidavits and the submissions filed in this matter. Notwithstanding the fact that the objection filed by the petitioners was not followed with an answer and cross-petition (although an application for extension of time to comply can still be made), I find that the decision in the summons for revocation may substantially affect this Cause. The two Causes are linked by the property, especially LR No. 150/13 original No. 150/2/1 and the resultant subdivisions. The property originally belonged to the late father of the objectors and petitioners, and there is no dispute that all these parties are beneficiaries of his estate. Substantial justice can only be done by an order that the present petition be stayed until the summons for revocation in HC 2639 of 2014 is heard and decided. I make an order in this regard and ask that costs be in the Cause.

DATED and DELIVERED at NAIROBI this 10th day of FEBRUARY 2016

A.O. MUCHELULE

JUDGE