



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT CHUKA

MISCELLANEOUS SUCCESSION APPLICATION NO. 1 OF 2015

IN THE MATTER OF THE ESTATE OF THE LATE M'RUTHIOMI NDAGONE(DECEASED)

MATI M'RUTHIOMI.....1ST PETITIONER/RESPONDENT

MUTEGI M'RUTHIOMI.....2ND PETITIONER/RESPONDENT

MERCY MBUTHU JAPHET.....APPLICANT/INTERESTED PARTY

RULING

1. M'Ruthiomi M'Ndagane (hereinafter "the deceased") died on 1st September, 2011 at Chuka Hospital. He left behind two properties title Nos.Kiera/E. Magutuni/1811 measuring 1.00 Ha and Kiera/E. Magutuni/259 measuring 3.20 Ha. By a letter dated 28th December, 2011, the Assistant Chief of Kaare sub-location wrote an introduction letter for the family of the deceased to enable the family mount a Succession Cause for the estate of the deceased. In his letter the Assistant chief set out names of eight (8) persons as those who survived the deceased.

2. Pursuant thereto, on 19th April,2012, Mati M'Rithiomi and Mutegi M'Rithiomi (hereinafter "the Petitioner") lodged in the Senior Principal Magistrates Court at Chuka Succession Cause No. 125 of 2012 petitioning for letters of administration. In that Petition, they only set out names of five (5) people as those who survived the deceased. It was not clear what had happened to the three others that had been named in the letter of introduction dated 28th December, 2011 by the Assistant chief of Kaare sub-location. The Petitioners disclosed that the value of the estate was Kshs.200,000/-. In pursuance thereof, the said court issued a grant of letters of administration intestate to the two (2) Petitioners on 31st, December, 2012.

3. On 18th July, 2013, the Petitioners applied for confirmation of the grant. In the application, they proposed to distribute the estate to seven (7) beneficiaries. On 13th August, 2012, the Protestor filed a caveat.Later on 13th August, 2015, she filed a summons for the revocation of the grant. The grounds upon which she made the application were that; the proceedings to obtain the grant were defective in substance; the grant was obtained fraudulently by making of a false statement or concealment of something material; that the estate was worth over Kshs.2 million and that the Chuka Principal Magistrate's Court did not have any jurisdiction to entertain the matter. The matter came up for hearing on 22nd March, 2016. Whilst the firm of David John Mbaya & Co. Advocate for the Protestor was represented by Mr. Kijaru Advocate, there was no appearance either by the Petitioners themselves or their Advocates Ms. Basilio Gitonga and Company. Having satisfied itself that the date was taken in court in the presence of the Advocates for the parties, the court directed the matter to proceed ex parte at 12.45 p.m.

4. The Protestor appeared and testified in support of her Summons. She told the court that she is the widow of the deceased. That she had lived with the deceased for 30 years since 1975. That she had four (4) children with the deceased namely, Rayford Mwiti (deceased), Purity Gaceri, Nancy Nkatha and Diana Gathoni. That the deceased had another wife who had died before the Protestor was married by the deceased; that the deceased had had four (4) children with that other wife, namely; Michael Mutegi, Mercy Kiacara, Milton Mati and Lucy Kathambi. That the estate left behind by the deceased constituted LR Kiera/E. Magutuni/206 (“plot 206”) measuring 7 acres and LR NO. Kiera/E. Magutuni/1811 (“plot 1811”) measuring about 3 acres.

5. That the deceased had said that the children do occupy plot 206 with each getting 1 acre each and plot 1811 measuring 3 acres be left for her as she had already constructed a permanent house thereon in 1984. That after the demise of the deceased, Mutegi M’Rithiomi evicted her from her house with the deceased and occupied the same. That she had constructed the house on plot No.1811 which is approximately 3 acres in 1984 for a cost exceeding Kshs.300,000/-, She therefore urged the court to allow her application.

6. Although the application had been served, the Petitioners did not file any Replying Affidavit in opposition thereto. This is despite having been granted an opportunity to do so. Further, no one appeared on their behalf at the hearing. The evidence of the Applicant was neither denied, contradicted nor challenged through cross-examination. In this regard, the evidence of the Protestor is taken to be true. Having considered the record and the evidence tendered; I make the following findings:-

(a) the deceased had two houses, that of the first wife (deceased) and the Protestor;

(b) the deceased left behind seven (7) children and a widow; these are:-

(i) Michael Mutegi M’Ruthiomi

(ii) Milton Mati M’Ruthiomi

(iii) Mercy KacaraM’Ruthiomi

(iv) Lucy Kathambi M’Ruthiomi

(v) Purity Kacara M’Ruthiomi

(vi) Nancy Nkatha M’Ruthiomi

(vii) Diana Gathoni M’Ruthiomi

(viii) Mercy Mbuthu Japhet (widow);

(c) the estate of the deceased constitutes two properties Kiera/E.Magutuni/206 & 1811 measuring approximately 10.37 Acres;

(d) that the protestor and the deceased had constructed on plot 1811 a house valued at over Kshs.300,000/- in 1984.

(e) that the estate had a value of Kshs.200,000/- disclosed in the Petition for the grant. In this regard, the Chuka Principal Magistrates Court did not have any jurisdiction to entertain the Succession Cause;

(f) that the Protestor had a right as the widow to petition for the grant yet her consent was not sought by the Petitioners. The proceedings to obtain the grant were therefore defective in material substance.

7. Accordingly, I find the application to be merited. The grant issued herein on 31st December, 2012 is

hereby revoked. So that not to leave the estate without being administered, and minded that the deceased had two (2) houses, I hereby appoint Matim'Ruthiomi and Mercy MbuthuJaphet as the administrators of the estate of the deceased. A fresh grant shall issue forthwith to the said two individuals. Since I was not addressed on distribution, I direct that the new administrators agree on distribution upon which they should file the application for confirmation. Alternatively, each may file their own mode of distribution for the court to determine.

It is so ordered.

Dated and Delivered at Chuka this 7th day of April, 2016

A.MABEYA - JUDGE

Court

Ruling read and delivered in open court in the presence of the applicant but in the absence of the respondents who did not appear at the trial.

A.MABEYA – JUDGE

07.04.2016