



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
FAMILY DIVISION
SUCCESSION CAUSE NO. 1633 OF 2009

IN THE MATTER OF THE ESTATE OF EUTYCHUS WANYOIKE NJAU (DECEASED)

ELISHEBA NYAMBURA WANGANGAAPPLICANT

VERSUS

LEONARD KAMAU WANYOIKE..... RESPONDENT

RULING

1. The deceased EUTYCHUS WANYOIKE NJAU died intestate on 21st August 1989. He was survived by one widow, BEATRICE KANYI WANYOIKE, and ten children as follows:
 - a. LEONARD KAMAU WANYOIKE (the respondent);
 - b. HUMPHREY NJAU NYOIKE;
 - c. GEOFFREY NG'ANG'A NYOIKE;
 - d. ANN NJERI NYOIKE;
 - e. BERNICE WANJIRU NYOIKE;
 - f. JAMES KIARIE NYOIKE;
 - g. RUTHMARY MUTHONI NYOIKE;
 - h. EUNICE WACEKE NYOIKE;
 - i. ELISHEBA NYAMBURA WANGANGA (the applicant); and
 - j. MARGARET WANJA NYOIKE.

2. The estate comprised of the following property:-
 - a. L.R. NO. NAIVASHA/KABATI T.O.L. 153;
 - b. SHARES IN GATAMAYU DEVELOPMENT CO. LTD;
 - c. L.R. NO. LARI/BATHI/T.57;
 - d. L.R. NO. KIJABE MISSION PLOT NO. 308;
 - e. L.R. NO. LARI/MAINGI/T.201;
 - f. L.R. NO UTHERI WA LARI PLOT NO. 4410; and
 - g. Plot No. 83 NAIVASHA MUNICIPALITY.

3. The widow and the respondent went to Kiambu Court in SRM Succession Cause No. 80 of 1990 and petitioned for grant of letters of administration intestate. HUMPHREY NJAU NYOIKE cross-petitioned for a grant. The widow died. A joint grant was issued to the respondent and

HUMPHREY on 4th September 1991 and confirmed on 16th April 2008. HUMPHREY died on 20th February 2005. The respondent became the sole administrator.

4. The applicant filed summons dated 10th June 2009 for the revocation of the grant under **section 76** of the **Law of Succession Act (Cap. 160)** and **rules 49** and **73** of the **Probate and Administration Rules**. Her case was that, although she was a daughter of the deceased, she had not at all been informed of the petition and cross-petition and all subsequent events leading to the confirmation of the grant. Her consent, she said, had not been sought or obtained during all these proceedings, with the result that she had been disinherited. She stated that her sisters had not been involved either and had therefore been left out of the distribution of the estate.
5. The application was served but did not elicit any response.
6. Under **rule 26(1)** letters of administration ought not be granted to any applicant without notice to every other person entitled in the same degree as or in priority to the applicant. The applicant is sister of the respondent and was entitled to know that a petition had been lodged for grant of letters of administration intestate in respect of her deceased father. Under **section 66** of the **Act** she ranked in same degree to the respondent. Further, under **rule 40(8)** it is provided that the consent of dependants or other persons who may be beneficially entitled to the estate is required in the application for confirmation of grant. Her consent was neither sought nor obtained.
7. A grant will be revoked where a person who is entitled to apply is not notified by the petitioner of his intention to apply and that person's consent to the petition is not sought. It is reasonable to find that the applicant was kept in the dark by the respondent because he did not want her to benefit from her late father's estate. That was fraudulent, and under **section 76** of the **Act** the grant should be revoked (**PATRICK NG'OLUA M'MUNGANIA V FREDRICK KIMATHI NG'OLUA & 8 OTHERS [2013] eKLR**).
8. In the conclusion, the grant that was issued to the respondent and the late HUMPHREY on 4th September 1990 and confirmed on 16th April 2008 is hereby revoked. The entire estate shall revert into the name of the deceased. If any new titles have been issued, they are ordered cancelled. Costs shall be paid by the respondent.

DATED at NAIROBI this 7th day of April 2015

A.O. MUCHELULE

JUDGE

DELIVERED at NAIROBI this 7th day of April; 2015

W. MUSYOKA

JUDGE