



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MACHAKOS
SUCCESSION CAUSE NO. 237 OF 2003
IN THE MATTER OF THE ESTATE OF MULI NGUMU (DECEASED)

PETER MULI.....PETITIONER

VERSUS

MUTUA MULI.....OBJECTOR

R U L I N G

1. **Muli Ngumu** (deceased) died domiciled in Kenya on the **25th November, 1989**. **Peter Muli**, his son petitioned for letters of administration in respect of his estate. He indicated names of persons surviving the deceased as:

- ***Kamweli Muli – Wife.***
- ***Peter Muli Ngumu – Son.***
- ***Kakai Muli – Daughter.***

2. On the **16th February, 2003** **Mutua Muli** lodged an objection to the grant of representation being made to **Muli Ngumu**. On the **2nd March, 2004** he filed an answer to the petition and Cross petition for the grant of representation in his capacity as a son to the deceased, stating that the deceased had three (3) wives.

On the **14th December, 2009**, **Lenaola J** appointed both of them as Administrators of the Estate of the deceased. Consequently letters of administration intestate were issued to them on the **18th January, 2010**.

3. On the **27th April, 2010** **Peter Muli Ngumu** filed summons for confirmation of the grant. In an affidavit in support of the application he stated that the deceased was survived by:

- ***Peter Muli Ngumu – Son.***
- ***Wambua Muli – Son.***
- ***Kakai Muli – Son.***
- ***Kanini Muli – Daughter.***

He identified an asset belonging to the deceased as 3¼ Hectares

- **Peter Muli Ngumu – 1 Hectare.**
- **Wambua Muli – 1 Hectare.**
- **Kakai Muli – 1 Hectare.**
- **Kanini Muli – ¼ of a Hectare.**

4. **Mutua Muli** filed an affidavit of protest stating that the deceased had three (3) wives, **Mbenge Muli**, **Kataa Muli** and **Kamweli Muli**.

Mbenge Muli (1st wife) had children as follows:

- i. **Mutei Muli.**
- ii. **Kyule Muli (deceased).**
- iii. **Kisilu Muli.**
- iv. **Mbulwa Muli.**
- v. **Mueni Muli.**
- vi. **Kavesu Muli.**

Kataa Muli (2nd wife) had children as follows:

- i. **Mutua Muli.**
- ii. **Mutuku Muli (deceased).**
- iii. **Kavili Muli (deceased).**
- iv. **Nini Muli.**
- v. **Tabitha Muli.**

Kamweli Muli had the following children:

- i. **Peter Muli.**
- ii. **Sarah Muli.**
- iii. **Wambua Muli.**
- iv. **Kakai Muli.**
- v. **Kanini Muli.**

5. That prior to his demise the deceased had subdivided his piece of land amongst the three (3) wives equally and settled each one of them on their respective piece of land together with their children. The subject land of the succession cause was given to **Kataa Muli** his mother. Prior to his father's demise the deceased with his third wife, **Kamweli Muli** jointly sold the land allocated to the third wife to one **Mutuku Muli**, his younger brother in 1969 when the area was being surveyed, a sale transaction that was witnessed by **Muthini Ndolo** (now deceased), **Nguma Ndutu** (the then Sub-Chief) and **Mulei Ngumu's** first wife.
6. Further, he stated that the proceeds of sale were used to purchase another piece of land in Yatta where she eventually relocated and settled with her children including **Peter Muli**. At the time of Land Adjudication all land owned by the deceased was registered in his name but the one sold off was registered in the name of his brother. Though registered in the deceased's name, the land belonged to the 1st and 2nd wives while the 3rd wife owned land in Yatta where she settled. According to customary law the land in issue belonged to his mother therefore ought to be shared amongst her children.
7. **Peter Muli Ngumu** filed a replying affidavit dated **14th February, 2014** denying allegation set out in the affidavit of protest stated that **Mutua Muli** was a stranger to the Estate of the deceased as he was their neighbour who moved away to Kibwezi where he resides and he had not mentioned specific land he was alluding to.
8. The application was canvassed by way of *viva voce* evidence. **Mutua Muli**, the Protester relied on the contents of his affidavit. In addition he denied having relocated to Kibwezi. On cross-examination he stated that he resides on the subject land. He stated that although his brother **Mutuku** is deceased he was survived by his children and that the succession cause was filed without their knowledge.

9. **Peter Muli** on the other hand stated that **Mutua** left his 1st wife at **Wamunyu** and he stays with his second wife at **Kitui**. He stated that to his knowledge the deceased was survived by **Kimweli, Peter Muli, Kanini Muli, Wambua Muli** and **Joseph Muli**. They had a dispute that the Protester was told to represent his mother's house. On cross examination he denied knowing the children of **Mbengei** and stated that it was the Protester who knew the children of **Kataa**.
10. On being questioned by the court he stated that his father was married to two (2) wives:

- **Kataa Muli.**
- **Kimweli Muli.**

And he recognized the Objector as his step brother, the son of **Kataa Muli** who had five (5) children. He denied knowing **Mbenge Muli**. He admitted having given the Chief the information that the deceased was survived by only one wife and four (4) children namely:

- **Peter Muli.**
- **Joseph Muli.**
- **Kakai Muli.**
- **Kanini Muli.**

He concluded by stating that the Protester's wife resides on Plot Number 364 Wamunyu 3 Kaitha while the 2nd family resides on the same plot but he only identified members of his mother's household as those who should get the parcel of land.

11. After the Petitioner testified, Counsel for the Petitioner, **Mr. Kamolo** told the court that most information had been concealed from him, therefore he was not calling any other witness.
12. When the Petitioner filed the petition, he swore an affidavit stating that the deceased was survived by one wife and three (3) children. The only asset indicated as having been left by the deceased was "**Wamunyu 3 Kaitha 364 (Land Parcel)**" situated at Wamunyu. One of the documents he presented to court was a letter authored by the Assistant Chief, Kikumini Sub-location which stated that the deceased was survived by:

- **Mrs. Kamweli Muli (wife).**
- **Mr. Peter Muli (Son).**
- **Mr. Joseph Muli (Son).**
- **Miss Kanini Muli (Daughter).**
- **Mr. Kakai Muli (Son).**

And, that the family had proposed **Peter Muli** to own land in **Wamunyu Title No. Wamunyu/Kaitha/64**.

13. Thereafter another P & A form was filed. The asset disclosed as having been left by the deceased was – **Wamunyu/Kaitha/64**. The affidavit in support of the petition of letters of administration intestate deposed by both **Peter Muli** and **Mutua Muli** dated **8th October, 2004** lists persons that survived the deceased as:

- **Mbenge Muli (1st wife) (deceased).**
- **Kisilu Muli (Son).**
- **Kaluki Muli (Daughter).**
- **Kataa Muli (2nd wife) (deceased).**
- **Mutua Muli (Son).**
- **Mutuku Muli (Deceased).**
- **Kanini Kyule (Married).**
- **Kamwele Muli (3rd wife).**
- **Peter Muli (Son).**
- **Joseph Muli (Son).**

- **Kakai Muli (Son).**
- **Kanini Muli (Daughter).**

14. **Peter Muli** having stated names of the beneficiaries of the Estate of the deceased appeared in court took an oath to state the truth but started off by lying that **Mutua Muli**, the Protester was not his brother but a neighbour. Thereafter he did acknowledge the fact of their actual relationship. He denied knowing his eldest step-mother **Mbenge** and her children. He admitted having only considered his immediate family members and having instructed the Assistant Chief to write the letter to court stating that they were the only persons who survived the deceased. It is apparent that by his conduct and word he aimed at misleading the court.
15. This was a grant that was issued after the Petitioner herein made false statement to the court. He concealed very important information that would enable the court reach a just decision. In court, he lied on oath which makes him unfit to be an administrator of the Estate.
16. Looking at the affidavit in support of the application for confirmation of the grant the asset to be distributed is not identified. Only the acreage is given by the Applicant, **Peter Muli**. The affidavit of protest is also silent on the property alluded to. What was the court supposed to distribute? It will be imperative for parties herein to identify what the deceased owned by proof of documentary evidence.
17. Although the Applicant (**Peter Muli**) was appointed as an administrator of the Estate of the deceased, his conduct has proved that he is deceitful therefore not fit to administer an Estate. This is a grant that must be revoked to pave way for identification of reasonable persons to petition for another grant. This court has the power to revoke the grant on its own motion (**Vide Section 76 of the Law of Succession Act**).
18. Consequently, being dissatisfied with the information given and the grant having turned out to be inoperative through subsequent circumstances that I have aforesaid, I hereby revoke the grant issued herein. The Protester, **Mutua Muli** and other persons to be identified by the family may petition for a fresh grant after identification of assets left by the deceased. For avoidance of doubt, the application dated **27th April, 2010** stands dismissed with costs to the Protester.
19. It is so ordered.

DATED, SIGNED and DELIVERED at MACHAKOS this 15th day of JULY, 2015.

L. N. MUTENDE

JUDGE