



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MACHAKOS

SUCCESSION CAUSE NO. 228 OF 2010

**IN THE MATTER OF THE ESTATE OF KOMBO MULINGE alias BENARD MULINGE
KOMBO**

RULING

1. The application dated 14th June 2012 seeks orders that:-

- (1) That this Honourable Court do grant orders that the said Grant issued on 1st day of October, 2010 to Simon Muhia Kombo be and is hereby revoked.
- (2) That a grant be and is hereby given appointing Regina Nthenya Ndeto, Teckla Kaveke Shindjoba and Simon Muhia Kombo as administrators of the estate of Kombo Mulinge alias Bernard Mulinge Kombo.
- (3) That the cost of this application be in the cause.

2. The application is supported by the affidavits of Teckla Kaveke Shindjoba, Regina Nthenya Ndeto, Agnes Mutinda Kombo and Annah Kombo who are daughters of the deceased. The administrator of the estate Simon Muhia Kombo, a son of the deceased is accused of having obtained the grant without the consent of all the beneficiaries when he petitioned the court for the grant of Letters of Administration. That the Respondent is administrating the estate without proper consultations with other family members. That the Respondent has disposed of several properties of the estate of the deceased in Kilungu, Yatta Kithimani, Tala and Katangini without the consent of other family members. It is further deponed that the Respondent is also carrying out construction works on the estate of the deceased without the consent of other family members.

3. The application is opposed. According to the replying affidavit sworn by the Respondent on 7th November, 2012, the Applicants who live in the UK and USA were informed when the application for the grant was made but they had no issues. That all other family members live abroad and the Respondent is the only person who takes care of the estate of the deceased. The Respondent wondered how the Objectors who live in the USA and the UK can be able to diligently administer the estate.

4. The application was canvassed by way of written submissions which I have duly considered.

5. On whether the Respondent obtained the consent of the applicants prior to petitioning the court for the grant of letters of administration, the Respondent's response is that the Applicants were informed. There was therefore no compliance with Rule 26(2) of the Probate and Administration Rules which provides that a written consent be obtained from the beneficiaries entitled to apply for Letters of Administration to the estate in equality with or in priority to the Applicant.

6. Without the duly signed consent from the other beneficiaries, the Respondent obtained the grant fraudulently when he filed a consent herein purportedly signed by all the beneficiaries. However, the Applicants have failed to exhibit in court any evidence of misappropriation of the estate of the deceased or the carrying out of construction works thereon by the Respondent.

7. The grant was issued on 1st October, 2010. The Respondent failed to apply for the confirmation of the same within one year contrary to the provisions of Section 76(d) of the Law of Succession Act.

8. With the foregoing, I hold that the application has merits. Consequently, the grant is hereby revoked.

9. The proposed co-administrators, Regina Nthenya Ndeto and Teckla Kaveke Shindjoba live in the UK and in the USA respectively. I agree with the submissions by the Respondent that it is difficult to administer the estate from abroad. I therefore direct the beneficiaries to agree within 60 days from the date hereof on the issue of appointment of other co-administrators who are based in Kenya. If there is no agreement, any of the parties to apply. Orders accordingly.

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B. THURANIRA JADEN

Dated and delivered at Machakos this 8th day of October, 2015

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B. THURANIRA JADEN

JUDGE