



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MACHAKOS**

**SUCCESSION CAUSE NO. 536 OF 2011**

**IN THE MATTER OF THE ESTATE OF MAXIM KASONGO KIMUNDI (DECEASED)**

1. MALITINA MUTU KASONGO
2. LUKAS KYEVA KASONGO ..... APPLICANTS

**RULING**

1. The **Summons** for Confirmation of grant filed on 4/7/2012 lists the properties that comprise the estate of the deceased as follows:-
  1. **“Plot No. Nguluni Watema No. 110**
  2. **Nguluni Watema No. 944**
  3. **Kiu Plot No. 915.”**
2. One of the sons to the deceased, **Ambrose Musau Kasongo** on 3/8/2012 filed an affidavit of protest to the confirmation of the grant. It is contended that the affidavit in support of the summons for confirmation of grant offends the rules of procedure as the same is commissioned by the same firm of Advocates who drew the same. That the administrators have failed to attach the list of distribution and that some properties belonging to the estate of the deceased, that is **Malili Agricultural Plot No. 0064 and Plot No. 1215 member No. 2588** have been deliberately left out. It is alleged that the 1<sup>st</sup> Administrator who is the widow of the deceased and the mother to the Protester deliberately transferred the said properties to her name. The Protester has also stated that he is not comfortable with the inclusion of his brother, **Lukas Kyevea Kasongo** as a Co-administrator and the mother should administrate the estate alone. According to the Protester, if the said 2<sup>nd</sup> Administrator remains as a Co-administrator then he too should be included as the 3<sup>rd</sup> Administrator. That the consent on distribution is purportedly signed by a deceased beneficiary **Pius Muthenya Kasongo**. The Protester has also averred that he was not involved in the proposed distribution neither asked to sign the consent on distribution.
3. The summons for confirmation of grant and the protest were heard contemporaneously by way of affidavits on record and written submissions. I have considered the affidavit evidence and the submissions filed by the counsels for the parties herein.
4. The summons for confirmation is commissioned by the same firm of Advocates who drew the same. This is unprocedural but the same does not go into the substance of the matter. Although the Protester has raised the issue that **Malili Agricultural Plot No. 0064 and Plot No. 1215** was fraudulently transferred to the mother's/1<sup>st</sup> Administrator's name, the same is not free property that is in the name of the deceased for the same has been distributed herein. The Protester ought to have pursued the issue of fraud in a different forum. The question whether the Protester should be enjoined as the 3<sup>rd</sup> Administrator is also being brought in at the wrong forum as no summons for the revocation/or annulment of the grant issued herein was filed.
5. It was submitted on behalf of the Protester that there is no objection to all the properties being

registered in the name of the 1<sup>st</sup> Administrator for her benefit and to hold in trust for all her children including the Protester.

6. The Administrator's position is that under **section 35** of the **Law of Succession Act**, the 1<sup>st</sup> Administrator as the surviving spouse is entitled to personal and household effects of the deceased absolutely and for a life interest in the whole residue of the net intestate estate and therefore there is no need of attaching a list of proposed distribution of the estate. Thus all the parties are in agreement on the issue of confirming the grant in the name of the 1<sup>st</sup> Administrator.
7. Consequently, the grant is hereby confirmed in the name of the 1<sup>st</sup> Administrator, **Malitina Mutu Kasongo** on her own behalf and on behalf of all the other beneficiaries. This being a family matter, each party to bear own costs.

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**B. THURANIRA JADEN**

**JUDGE**

**Dated and delivered at Machakos this 15<sup>th</sup> day of May 2014.**

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**B. THURANIRA JADEN**

**JUDGE**