



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

**SUCCESSION CAUSE NO.1827 OF 2010**

**IN THE MATTER OF THE ESTATE OF TAPORU OLE KUSERO (DECEASED)**

**DANIEL TOIYIANKA MUNIK.....1<sup>ST</sup>  
APPLICANT**

**MARY TAPORU KUSERO.....2<sup>ND</sup>  
APPLICANT**

**VERSUS**

**WAMBUI ENE  
TAPORU.....PETITIONER**

**RULING**

Taporu Ole Kusero, the deceased to whose estate these proceedings relate died on 4<sup>th</sup> April 2009. On 16<sup>th</sup> September 2010, Wambui Ene Taporu (the Petitioner), petitioned this court to be issued with a grant of letters of administration intestate. In the petition, the Petitioner listed the following as the dependants of the deceased:

- I. Herself as the widow of the deceased.
- II. Margaret Nailanoi Mopel
- III. Julius S. Kusero
- IV. Kayoni Tapuro
- V. Albert Solitei Ole Kusero
- VI. Susana Temeto Kusero
- VII. Simeon Kusero
- VIII. Virginia Seremeti Parkanjo

She listed two properties as comprising the estate of the deceased. The said properties are LR. No. Kajiado/Ntashart/178 and LR. No. Ngong/Ngong/38. The Petitioner was issued with a grant of letters of administration intestate on 3<sup>rd</sup> March 2011. The grant was confirmed on 13<sup>th</sup> July 2011 before the expiry of the statutory period of six months because the Petitioner sought to be exempted from seeking the confirmation of grant within the said period.

On 24<sup>th</sup> August 2011, the 1<sup>st</sup> Applicant, Daniel Ole Kusero filed an application pursuant to the provisions of **Section 76** of the **Law of Succession Act** seeking to have the grant of letters of administration issued to the Petitioner revoked on the grounds that the Petitioner had obtained the said grant through fraud and by making false statements and concealing from the court material facts. In particular, he stated that the Petitioner had failed to disclose to the court that the deceased had another wife by the name Mary Taporu

who had seven children with the deceased and who had not been provided for during the distribution. The 1<sup>st</sup> Applicant further stated that the Petitioner had failed to disclose the fact that LR. No. Ngong/Ngong/38 initially belonged to Monik Ole Kusero and therefore did not form part of the estate of the deceased. He stated that the Petitioner had sought to inherit the said parcel of land without seeking the consent of other beneficiaries of the estate of the deceased. The application is supported by the annexed affidavit of the 1<sup>st</sup> Applicant.

On her part, the 2<sup>nd</sup> Applicant Mary Taporu Kusero also filed a similar application to the 1<sup>st</sup> Applicant. She sought for the grant issued to the Petitioner revoked pursuant to the provisions **Section 76** of the **Law of Succession Act**. She too stated that the Petitioner had obtained the grant by concealing from the court material facts, particularly the fact that she was the wife of the deceased. She further stated that the Petitioner failed to disclose her children as beneficiaries of the estate of the deceased. Her consent and that of her children was not sought before the Petitioner sought the grant of letters of administration intestate from the court. She further stated that the Petitioner had failed to disclose the fact that LR. No. Ngong/Ngong/38 did not form part of the estate of the deceased but rather belonged to Monik Ole Kusero who left behind 67 other beneficiaries. The application is supported by the annexed affidavit of the 2<sup>nd</sup> Applicant.

In response to the application, the Petitioner swore two replying affidavits in opposition to the applications. In response to the application by the 1<sup>st</sup> Applicant, the Petitioner denied the allegation that the parcel of land known as LR. No. Ngong/Ngong/38 belonged to Monik Ole Kusero. It was her case that the deceased was at the time of his death the registered owner of the said suit parcel of land. She explained that Monik Ole Kusero was the father of the deceased. Upon his father's death, the deceased had inherited the suit parcel of land. She denied the assertion by the 1<sup>st</sup> Applicant which was to the effect that the family of Monik Ole Kusero had any legal claim over the suit parcel of land. She conceded that a complaint had indeed been lodged before the Kajiado Land Dispute Tribunal by the 1<sup>st</sup> Applicant. The dispute is yet to be resolved. As regard the application by the 2<sup>nd</sup> Applicant, the Petitioner denied that the 2<sup>nd</sup> Applicant was married to the deceased. She however conceded that the deceased had cohabited with the 2<sup>nd</sup> Applicant whereby four (4) children were born out of the relationship. She stated that the four (4) children that the deceased had with the 2<sup>nd</sup> Applicant were:

- I. Tepeyian Taporu Kusero
- II. Letuwon Taporu Kusero
- III. Ntimama Taporu Kusero
- IV. Lemeloi Taporu Kusero

She stated that the 2<sup>nd</sup> Applicant was prior to cohabiting with the deceased married to one Kungu Njuguna with whom she had three (3) children. She further deponed that after the 2<sup>nd</sup> Applicant had separated from the deceased, she went back to live with her said husband. It was her case that at the time of the deceased's death, the 2<sup>nd</sup> Applicant was living with her said husband. She explained that the reason why she excluded the acknowledged children of the deceased from the list of beneficiaries of the deceased was because the said four (4) children were under the custody of the extended family. She further deponed that parcel of land known as LR. No. Ngong/Ngong/38 was no longer in existence since the same had been subdivided pursuant to the certificate of confirmation of grant and part of it sold to a third party. She urged the court to dismiss both applications with costs.

At the hearing of the two applications, this court heard oral rival submission made by Miss Mwatsama for the Applicants and Miss Boyani for the Petitioner. Learned counsel essentially reiterated the contents of the pleadings filed by the parties herein. The issue for determination by this court is whether the Applicants laid sufficient basis for this court to grant the prayers sought in their respective applications. As stated earlier in this ruling, the Applicants' applications are predicated on the provisions of **Section 76** of the **Law Succession Act** which provides as follows:

*“A grant of representation, whether or not confirmed, may at any time be revoked or*

***annulled if the court decides, either on application by any interested party or of its own motion:-***

- a. ***that the proceedings to obtain the grant were defective in substance;***
- b. ***that the grant was obtained fraudulently by the making of a false statement or by the concealment from the court of something material to the case;***
- c. ***that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently;***
- d. ***that the person to whom the grant was made has failed, after due notice and without reasonable cause either-***
  - i. ***to apply for confirmation of the grant within one year from the date thereof, or such longer period as the court has ordered or allowed; or***
  - ii. ***to proceed diligently with the administration of the estate; or***
  - iii. ***to produce to the court, within the time prescribed, any such inventory or account of administration as is required by the provisions of paragraphs (e) and (g) of Section 83 or has produced any such inventory or account which is false in any material particular; or***
- e. ***that the grant has become useless and inoperative through subsequent circumstances.”***

It was clear that the Applicants based their application on **Section 76(b)** of the **Law of Succession Act** which states that a grant of representation may be revoked if it was obtained by fraudulently making false statements or concealing from the court something that is material to the case. In the present case, it was apparent that the Petitioner failed to disclose to the court the full list of the dependants of the deceased. Although the Petitioner stated that the 2<sup>nd</sup> Applicant was a cohabitee of the deceased, it was clear from affidavit evidence that the deceased was indeed married to the 2<sup>nd</sup> Applicant at the time of his death. The Petitioner conceded that the 2<sup>nd</sup> Applicant had at least had four (4) children with the deceased. It was highly unlikely that deceased would have sired the four (4) children with the 2<sup>nd</sup> Applicant if the 2<sup>nd</sup> Applicant was not his wife. The four (4) children were sired during a sufficiently long period of time that for all intents and purposes the 2<sup>nd</sup> Applicant can be safely presumed to have been the wife of the deceased. The 2<sup>nd</sup> Applicant and her said four (4) children are dependants of the deceased within the meaning of **Section 29(a)** of the **Law of Succession Act**. As regard the other three children of the 2<sup>nd</sup> Applicant whom the Petitioner denied that they were sired by the deceased, the 2<sup>nd</sup> Applicant will have an opportunity to establish whether or not the said three (3) children were born to the deceased. It was clear to this court that the Petitioner had failed to disclose the facts that the deceased had a second wife and other children when she petitioned this court to be issued with a grant of letters of administration intestate. She further failed to disclose the fact that there was a pending dispute between herself and her brothers in-law (including the 1<sup>st</sup> Applicant) in relation to the ownership of the parcel of land known as LR. No. Ngong/Ngong/38. The Petitioner conceded that there was a pending dispute between herself and her brothers in-law before the then Kajiado Land Dispute Tribunal. That dispute is yet to be determined.

Upon evaluating the facts of this case, it was evident that the Applicants indeed established that the Petitioner obtained the grant of letters of administration intestate by concealing from the court material facts of the case. The material facts that the Petitioner concealed is the existence of other dependants of the deceased. The Petitioner further failed to disclose to the court the fact that the parcel of land known as LR.No. Ngong/Ngong/38 was subject to a dispute which has not yet been resolved. In the premises therefore, this court holds that the Applicants established their case that indeed the Petitioner concealed from the court the fact that the deceased had other dependants. The Petitioner therefore used the court process to disinherit other dependants of the deceased. The said grant was therefore fraudulently obtained. This court therefore revokes the grant that was issued to the Petitioner on 3<sup>rd</sup> March 2011. The court further revokes the certificate of grant that was issued to the Petitioner on 13<sup>th</sup> July 2011. Any transaction done pursuant to the said certificate of confirmation of grant in respect of the titles of parcels of land known as LR. No. Ngong/Ngong/38 and LR. No. Kajiado/Ntashart/178 are hereby ordered cancelled. The said titles shall revert to the name of the deceased pending the hearing and determination of the

succession dispute. The Applicants shall have the costs of the application. It is so ordered.

**DATED AT NAIROBI THIS 10<sup>TH</sup> DAY OF JUNE, 2014**

**L. KIMARU**

**JUDGE**