



**REPUBLIC OF KENYA**

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

**SUCCESSION CAUSE NO 1081 OF 2012**

IN THE MATTER OF THE ESTATE OF **JOSEPH WAMBUA NDUTU (DECEASED)**

**PAULINE WANZA NZUKI.....1<sup>ST</sup> OBJECTOR /APPLICANT**

**RAPHAEL MUENDO WAMBUA.....2<sup>nd</sup>OBJECTOR /APPLICANT**

**PATRICK MULI WAMBUA.....3<sup>rd</sup> OBJECTOR /APPLICANT**

**ROSEMARY MWIKALI NYAGA.....4<sup>th</sup> OBJECTOR /APPLICANT**

**ALBANUS MUIA WAMBUA.....5<sup>TH</sup> OBJECTOR/APPLICANT**

**VERSUS**

**ELIZABETH MBULI WAMBUA.....ADMINISTRATOR/RESPONDENT**

**RULING**

1. The application dated **9<sup>th</sup> July, 2014** is brought pursuant to the provisions of **Section 76** of the **Law of Succession Act, Rules 44 and 49** of the **Probate and Administration Rules**.
2. The applicant seeks issuance of orders as hereunder;-
  - i. An injunction against the respondent and her servants from evicting the applicant from plot No. 17–120 Share No. 119 (the plot), transferring, charging, leasing, selling, processing any title deed, subdividing, alienating, meddling with the plot, collecting, wasting and /or utilizing income and/or other revenue that has accrued to the plot.
  - ii. The respondent to render full account of the revenue collected from the plot.
  - iii. The confirmed grant issued on the **4<sup>th</sup> October, 2013** be revoked
  - iv. The first objector be appointed joint administrators of the estate of the deceased.
  - v. The alleged will dated **8<sup>th</sup> May, 2011** be revoked.
3. The application is premised on grounds that the respondent did not notify the applicants of the petition herein; the chief's letter presented did not list all names of the beneficiaries, dependants or family members; the respondent failed to disclose that she has a co-wife, the 1<sup>st</sup> objector herein who had children with the deceased; the alleged will of the deceased is void due to lack of attestation of the thumbprint, it failed to make reasonable provisions for all the children and wives, it was made in English language with no Kamba translation; the deceased at the time had no mental capacity to make a will as his health, memory and bodily functions had deteriorated and the alleged witnesses did not sign; the grant issued was void as the respondent was issued with

- grant of Letters of Administration Intestate which was confirmed instead of Grant of Probate and the respondent failed to disclose that she had been served with a citation in respect of a Kangundo case which she declined to enter appearance.
4. The application is supported by an affidavit deposed by the 1<sup>st</sup> applicant having been authorized by her co-objectors avers that she married the deceased under Kamba customary law and they were blessed with four(4) children the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> applicants. The respondent also had four (4) children with the deceased. The respondent refused to apply for Letters of Administration with the applicant. Her action forced the applicant to file citation proceedings and thereafter a **Succession Cause in Kangundo Law Courts**. Later on she discovered that the respondent had filed a petition and did not disclose that she had a co-wife. The respondent failed and/or neglected to file a response to the application.
  5. At the hearing, counsel for the applicant sought prayers other than the one for seeking revocation of the will which he argued that would be raised at the point of intended distribution of the estate of the deceased.
  6. A perusal of the court record shows that initially the respondent petitioned the court for a Grant of Probate or for Letters of Administration with written will annexed. The notice sent to the Principal Registry however, erroneously indicated that the application made was for letters of Administration Intestate. Consequently gazettelement was done and a Grant of Letters of Administration Intestate was issued. In an affidavit in support of summons for Confirmation of the Grant issued, the respondent stated that the deceased was survived by her and their children without any dependants. A certificate of the grant thereof was issued.
  7. According to **Section 76** of the **Law of Succession Act** a grant of representation whether confirmed or not may be revoked following an application by an interested party or on the court's own motion. This would be based on grounds of proceedings to obtain the grant being defective in substance or the grant having been obtained by making of a false statement or by concealment from the court of something material to the case ( see **Section 76(a) & (b) of the Law of Succession Act**).
  8. Without evidence to the contrary, the applicants have demonstrated that they are wife and children of the deceased. Therefore, they are entitled to the estate of deceased. Failure to disclose their existence was concealment of material facts from the court. In that regard the grant issued and confirmed must be revoked.
  9. A prayer has been made for the respondent to render full account of all revenue and rental income from the plot. However, it has not been demonstrated that the estate of the deceased comprised of rental properties.
  10. In the result, I hereby revoke the grant of Letters of Administration Intestate issued herein on the **17<sup>th</sup> January 2013** and confirmed on the **4<sup>th</sup> October, 2013**.
  11. Pursuant to the provisions of **Section 66** of the **Laws of Succession Act**, in the best interest of all beneficiaries of the estate of the deceased a Grant of Letters of Administration shall issue to the applicant **Pauline Wanza Nzuki** and the respondent **Elizabeth Mbuli Wambua**.
  12. This being a Succession Cause each party will bear their own costs.

**DATED, SIGNED and DELIVERED at MACHAKOS this 11<sup>TH</sup> day of JULY, 2014.**

**L.N. MUTENDE**

**JUDGE**